NOMINATIONS OF ANNE M. GORSUCH AND JOHN W. HERNANDEZ, JR.

HEARINGS

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF ANNE M. GORSUCH TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY AND JOHN W. HERNANDEZ, JR., TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

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NOMINATION OF ANNE M. GORSUCH

FRIDAY, MAY 1, 1981

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met at 11 a.m., in room 1202, Dirksen Senate Office Building, Hon. Robert T. Stafford (chairman) presiding.

Present: Senators Stafford, Domenici, Chafee, Abdnor, Symms, Gorton, Murkowski, Randolph, Hart, and Baucus.

Senator STAFFORD. The meeting of the Committee on Environment and Public Works will please come to order.

On behalf of the committee, I wish to welcome all of our guests this morning. We apologize for the hour's delay in starting. We had planned to hold this meeting in our own committee room, but, obviously, that was not going to begin to accommodate the people who wished to be here and we made the change to this room for your convenience so that everybody who wished to attend might have an opportunity to be present. Now we are starting right on time, and we are very happy to welcome Mrs. Gorsuch this morning.

To introduce her, our dear friend and most valuable member of this committee, Senator Alan Simpson of Wyoming.

STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator SIMPSON. Thank you very much, Mr. Chairman and fellow members of the committee. It is more foreign being down here than up there, I must say. I miss you all. Staff has been scurring about since 10 and your staff has been most courteous to me. I appreciate your accommodating me, since I have to chair another hearing at this very hour and will soon exit.

I thought to myself, there is an obvious biblical precedence for all this. It is related that Jacob died leaning on his staff.

I am pleased to introduce Anne McGill Gorsuch for Administrator of the Environmental Protection Agency. While she now resides in the neighboring State of Colorado, she is a native of Wyoming. Mrs. Gorsuch is a highly qualified individual. She has fine intellectual and reasoning abilities which are evidenced in her common sense approach to problems. Her wealth of experience in local and State government have made her well aware of the importance of the complexity of environmental issues.

While Anne was a member of the Colorado State House of Representatives, she was vice chairman of the judiciary committee at a time when I was a member of the Wyoming Legislature. She was chairman of the house State affairs committee, chairman of the interim committee and hazardous waste, a member of the transportation and energy committee.

During her term as the State representative, Anne Gorsuch dealt with such critically important issues as auto emissions and high altitude air quality, toxic chemical waste disposal and nuclear waste handling.

I am very pleased with her past experience as a very active and dynamic member of the Colorado State Assembly. As a former State legislator myself, I share her frustration and experiences in assessing the demanding and perplexing position which several States find themselves in in assuming primacy for administration of Federal environmental legislation.

The major programs for clean air, clean water, toxic substances, resource conservation and recovery, and noise control, are all intended to be implemented by the States. And I know it comes as a shock to some that States are actually governed by a rather haggard and hearty band of conscious people, Democrats and Republicans, known as governors and legislators. Really not too sinister a grouping, and I think sometimes that is overlooked in this arena.

Her knowledge of Federal-State relationships and the snarls which occur in those relationships should enable her to be a very effective administrator.

In the recent past, State legislators have been compromised into retooling their statutes that govern public health and natural resource management laws which often preceded Federal enactments by many years. So, I am confident, Mr. Chairman, that in her role as EPA administrator, Anne Gorsuch will endeavor to strike more for equitable results in the area of State-Federal cooperation and begin to extricate this country from this pervasive pattern of paternal environmentalism.

The preservation of an environment which is beneficial to human life depends not only upon the actions of Congress but upon legislators and governors and also upon the persons selected to be the EPA administrator. I believe that she will be very creatively effective in this position since she has also obtained most considerable experience as a lawyer involved in public policy issues and she will be most capable at understanding and interpreting and enforcing our Nation's most intricate environmental laws.

I am gratified to see the team of pragmatic environmental and natural resource managers which President Reagan has attracted to his administration and I think Anne Gorsuch will make a very fine addition to that crew.

Mr. Chairman and members of the committee, I am pleased to commend her to you. Thank you for your courtesy.

Senator STAFFORD. Thank you very much, Senator Simpson. I can't think of a more articulate or persuasive advocate for Mrs. Gorsuch than yourself. We are very pleased to have you here to introduce her.

Senator SIMPSON. Mr. Chairman, I also have some remarks of my colleague, Senator Wallop, and would ask that those be included in the record.

Senator STAFFORD. Without objection, they will be included in the record. The Chair will point out at this time that Senator Armstrong of Colorado had intended to be here but he has had, for sometime, a commitment to be in Denver and was unable to break it. He is placing a statement in the record, Mrs. Gorsuch, supporting, very strongly, your candidacy. In addition, I am in receipt of a letter from Senator Cranston which also will be made a part of the record.

[The statements of Senators Wallop and Armstrong and Senator Cranston's letter follow:]

OPENING STATEMENT OF HON. MALCOLM WALLOP, U.S. SENATOR FROM THE STATE OF WYOMING

Mr. Chairman, I appreciate this opportunity to join with my colleagues in presenting to this committee President Reagan's nominee for the job of administrator for Environmental Protection Agency, a fellow Westerner and native of Wyoming, Anne McGill Gorsuch.

EPA has been charged with the important responsibility of protecting and enhancing our environment. In carrying out this mandate, the administrator must possess the ability to coordinate and cooperate with state and local governments in cleaning up the nation's air, land, and water. Anne Gorsuch's skills as a lawyer and past state legislator will be an asset in performing this job. As Chairman of several state house committees, she has learned the merit in working with all interested parties to achieve the best and most workable solution to problems. Anne brings to the job of administrator the sensitivity necessary to perform the task.

EPA, being the largest regulator of any federal agency, has been criticized for its red tape, duplications of review and inflexibility in determining standards. I am confident that Anne Gorsuch's past experience will provide her with the background to eliminate unnecessary rules and regulations and to streamline the procedures American industries must follow in complying with federally-mandated environmental programs. I am certain that all of this can be achieved without further degradation to our environment.

Again, I thank the committee for allowing me to join in the introduction of Anne McGill Gorsuch and I look forward to working with her as administrator of EPA.

STATEMENT OF SENATOR WILLIAM L. ARMSTRONG
ON INTRODUCING ANNE MC GILL GORSUCH
PRESIDENT REAGAN'S NOMINEE FOR THE POSITION OF
ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

May 1, 1981

Mr. Chairman, it is indeed a pleasure for me to introduce a fellow Coloradan, Anne McGill Gorsuch, as President Reagan's nominee for Administrator of the Environmental Protection Agency.

Anne Gorsuch has superior intellect and analytical abilities, demonstrated by her outstanding academic record and by the breadth and depth of her professional career. Her record is that of a top-notch attorney, local official, articulate spokesman and distinguished legislator. She is a stickler for details and demands decisions based on facts rather than on ideology or emotionalism.

As a member of the Colorado legislature, she developed a strong expertise on air quality and hazardous waste issues. She was heavily involved in the auto emissions and high altitude air quality questions and in the issue of the proper weight to give natural background pollution levels in setting emission and ambient air quality standards. As Chairman of the Interim Committee on Hazardous Wastes, Mrs. Gorsuch also tackled the tough problems of how to store and dispose of toxic chemical and nuclear wastes.

Mrs. Gorsuch also has broad knowledge of state-federal relations; the operations, characteristics and capabilities of local, state and federal government entities; business and business problems; and the pitfalls of overzealous regulation. These are precisely the issues that will be facing Congress and the Environmental Protection Agency during the next four years.

In addition to these qualifications, Anne McGill Gorsuch also has demonstrated an ability to attract people who are thoroughly familiar with the subject matter and who are able to get things done. Her experience with the legislative and regulatory process has prepared her superbly for the important and difficult tasks ahead.

America's voters have sent a message: We must have change, and that goes for the way we handle our environmental issues, *as well as* our economic issues. The public senses that many of our regulators have lost the ability to balance the sometimes competing goals of protecting the air and water, while also allowing vital manufacturing and production activities to continue. The public is demanding regulatory reform and regulators who will use our limited financial and other resources to address *all* the needs of our modern industrial society, not just its environmental needs.

Mr. Chairman, something is wrong with our environmental programs when a group of Colorado water quality engineers tells me they and the local communities would prefer not to apply for EPA's wastewater treatment grants. I found this hard to believe. But they explained that the red tape, multiple forms, unnecessary and inflexible standards and requirements, difficult administrative procedures and extensive delays involved in getting a grant often doubled the costs of treatment facilities constructed under this EPA program.

Something is wrong when, in 1980 alone, America's business community had to deal with a *Federal Register* that totalled more than 87,000 pages -- an increase of 76,000 pages since 1958 and 30,000 pages just since 1976. This is a significant burden even for our largest companies. Our small businesses -- the ones about which we in Congress so frequently shed crocodile tears* -- do not have the time, money or manpower even to read the daily table of contents, to see which new rules are likely to affect them, much less understand and implement the rules.

---

* "The Walrus and the Carpenter" from *Through the Looking Glass* by Lewis Carroll:

"I weep for you," the Walrus said:
"I deeply sympathize."
With sobs and tears he sorted out
Those of the largest size,
Holding his pocket-handkerchief
Before his streaming eyes.

"O Oysters," said the Carpenter,
"You've had a pleasant run?"
"Shall we be trotting home again?"
But answer came there none --
And this was scarcely odd, because
They'd eaten every one.

Something is wrong when individual companies or entire industries must spend so much money on federally mandated environmental programs that they cannot afford to repair facilities, modernize, conduct research and development programs, or remain competitive with foreign nations.

This cannot continue. It is clear to me that this Nation has reached a point in its history when new approaches and new regulatory philosophies must be tried. Our funds are limited. We must learn how to set overall priorities -- not just priorities within each individual environmental or economic program. We must learn to utilize our human, economic and natural resources in a way that best addresses all our competing needs and priorities.

To make these changes, we need new administrators who understand how our health, safety, environment, national security, economy, productivity and free enterprise are all related to one another, and to our desire for continued social improvement. We need leaders who are strong, knowledgeable, respected and equal to the challenge, leaders who will enhance the role of state and local governments in environmental matters, while protecting the ability of the federal government and Environmental Protection Agency to address critical environmental issues and implement cost-effective regulations and appropriate regulatory reforms.

I can attest that Anne McGill Gorsuch will bring precisely these qualities to the important post of EPA Administrator.

ALAN CRANSTON
CALIFORNIA

United States Senate
WASHINGTON, D.C. 20510

April 28, 1981

Honorable Robert T. Stafford
Honorable Jennings Randolph
Committee on Environment and Public Works
United States Senate
Washington, D. C. 20510

Dear Bob and Jennings,

The confirmation hearing for Ms. Ann Gorsuch to the post of Administrator provides an important opportunity to review serious questions regarding the independence of the Environmental Protection Agency. I'm concerned that the Administration's efforts for regulatory review and accompanying proposals for change undertaken prior to her appointment may affect her authority to do the job.

It is important to determine whether or not Ms. Gorsuch has been instructed by others in the Administration to perform certain specific regulatory functions as a condition of her appointment. Mr. Stockman, the Director of the Office of Management and Budget, has a "hit list" of federal regulations which he intends to repeal or modify. Vice President Bush has announced numerous changes in EPA regulations and policies implementing the Clean Air Act.

EPA regulations have been developed in an orderly procedural process. Some are specifically required by law. At the minimum, any change in these regulations would seem to require an equally orderly administrative process and some could not be abandoned without statutory authorization. It would be useful to explore with Ms. Gorsuch her views with respect to Mr. Stockman's "hit list" especially to learn of any instructions expressed or implied that she has received with respect to those regulations.

There are two other very basic questions which need to be pursued. One relates to the announced intention of the Administration to use budgetary policy to circumvent regulatory responsibility. I would appreciate your exploring with Ms. Gorsuch the extent to which she has agreed to limit required regulatory activity as a part of the Administration's overall economic plan. For example, did she agree to limit certain kinds of regulatory functions which she will not pursue or is she free, as Administrator, to review the entire responsibilities of the Agency and establish priorities based on statutory requirements, public health and other factors?

Finally there is the question of the regulatory reform group headed by the Vice President. Has Ms. Gorsuch discussed this task force and its relationship to EPA with anyone in the White House? Is she free to pursue the priorities which have been established by the Congress and which are dictated by the requirement of protection of public health and welfare or is she committed to follow the reform group's recommendations irrespective of statutory mandates of the Environmental Protection Agency?

EPA unlike the FTC, CAB and other agencies, was not set up as an independent agency pursuant to an act of Congress. It was created through an Executive Order which Congress approved at least in part because the White House guaranteed that EPA would be independent. I would be much more reassured if the committee, prior to voting on Ms. Gorsuch's nomination, obtains the necessary assurances that the independence originally intended for this vital public agency will be maintained under her Administration.

Sincerely,

Alan Cranston

Senator **Stafford**. I understand we have two members of the House here from your State and the committee would be most happy to hear from each one. We don't know your precedence in rank, so the Chair will leave it to you gentlemen to decide which one of you comes first.

STATEMENT OF HON. HANK BROWN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Mr. **Brown**. Mr. Chairman, members of the committee, I appreciate very much the opportunity to appear before you. My name is Hank Brown and I represent the 4th Congressional District of Colorado. It is a particular treat to appear concerning Anne Gorsuch who is the President's nominee for the Administrator of the Environmental Protection Agency. While, unfortunately, she was born in Wyoming, she promptly corrected that error and moved to Colorado. We are delighted to claim her, Senator.

Anne is an exceptionally well-qualified candidate. I think you will find it refreshing and most enjoyable to work with her. Anne is a graduate of the University of Colorado in 1961. She completed her 4-year undergraduate work there in only 2 years plus the summer sessions. In addition to achieving a superb academic record, she was selected for membership in the Mortar Board which at C.U. honors those who make exceptional contributions to the campus community.

At a time when few women entered law school, Anne enrolled in the university's school of law. She completed the 3-year program in 2½ years, served as a class officer each year and was selected for the board of editors of the Law Review.

At the ripe old age of 21, Anne had received her bachelor of arts degree, completed law school, passed the Colorado bar exam and was awarded a Fulbright scholarship.

Her activities since then have continued her pattern of exceptional achievement. As a deputy district attorney, she helped revamp and streamline the administration of the district attorney's office and developed an automatic referral system from the social services department to the district attorney's office.

She was twice elected to the Colorado House of Representatives from a Denver district thought to be a Democratic district. Anne was selected as chairman of the State affairs committee and was the chairman of the joint house and senate legislative services committee. This committee is one of the most important in the Colorado General Assembly with a staff totaling 40.

Anne has served as a corporate attorney for the Rocky Mountain region's largest employer, Mountain Bell, and brings a wide background of experience and accomplishment in both the private and public sectors.

I think you will find Anne Gorsuch is brilliant, hard working, and a dedicated public servant.

Thank you, Mr. Chairman.

Senator **STAFFORD**. Thank you very much, We appreciate your testimony. We are ready to hear from your colleague.

STATEMENT OF HON. KEN KRAMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Representative **KRAMER**. Thank you, Mr. Chairman, I have learned this morning that the Senate runs on the same time as the House does, so I am glad to know that similarity.

It is an honor to be able to address this committee and to introduce and recommend wholeheartedly my former colleague and friend, Anne Gorsuch, who has most deservedly been nominated by the President as the Administrator of the Environmental Protection Agency.

In addition to her notable background and capabilities, I would like to share with the committee my own perspective on Anne, both as a former colleague and as a member of the house.

As some of you may know, I served with Anne in the Colorado State House in 1977 and 1978. There are those that wish I was back there. But I had the privilege of spending 2 years with Anne at that time, and we shared an office, not only a seat in the Colorado House, but the same office, and I can truly say that her enthusiasm and her scholarly habits could have easily filled several offices. If I had wandered too far from my desk, I might have found extra copies of the volume 3 of the Colorado Revised Statutes in my chair—and volumes 6 through 10 stacked on my desk.

More seriously, though—Anne's credentials show a total commitment to excellence. Her taking college courses during her high school summers, her honors program at the University of Colorado, her membership on the Colorado Law Review, her selection as a Fulbright Scholar—and all done at an age that many of us are still wandering around in undergraduate school. These are just a few of the honors that I can list and enumerate.

Her continued success is one of the primary reasons for her nomination, She was a parttime professor of political science, a trust administrator, a deputy district attorney, State administrative hearing officer, corporate attorney dealing with real property.

On top of this, she ran successfully for the Colorado State House from a normally Democratic district. And once elected, she quickly made her mark.

She was assigned to three committees when I served with her during her tenure in the Colorado State Legislature. Most freshmen legislators are given two. She was vice chairman of the judiciary committee her very first year that she got to the house. She also served on the finance and appropriations committees.

As a freshman, I have learned in the house that a freshman's place is to be seen and not heard, and not seen too often, but Anne in the Colorado State Legislature was a prime sponsor of 21 bills passed by the general assembly. She was the author of the Colorado presumptive sentencing law, which rewrote the sentencing provisions of the Colorado State Criminal Code.

And although her 1977-78 version was vetoed by our Governor, her 1979-80 version, only slightly modified, became law. Another one of her successful bills repealed over 70 sections of redundant, obsolete, or duplicative Colorado statutes.

She was recognized as a leader, recognized as soneone with beliefs, standards, and enthusiasm, recognized as a legislator able to educate and convince others, recognized as a principled individual able to say what she felt was right and, perhaps more important, able to get the job done, and get it done well.

As a result, she was voted the outstanding freshman legislator of the 1977-78 term.

The accomplishments of her second term were even greater. She became the chairman of the State affairs committee, one of the three major house committees. She handled 18 percent of all referred bills and resolutions before the State house in that capacity.

She still found the time and the energy to serve on the transportation and energy committee and on the joint house-senate legal services committee. In fact, in 1980 she was chairman of the legal services committee.

In her second term she became more deeply involved with tax cuts, legislative reviews, and the environment.

During the 1979-80 session of the Colorado General Assembly repealed four State taxes. One of the measures dealing with the State sales tax on food, was authored and sponsored by Anne Gorsuch.

Under her chairmanship, the legal services committee completed the review of all new State regulatory rules, all 358 of them, plus a review of 4 of the 12 volumes of the Colorado Code of State Regulations. These reviews were accomplished on schedule and without hiring any new employees. Put in perspective, in 1 year, her committee reviewed all new rules and 33 percent of the existing rules, twice as many as in the previous year.

During the 1979-80 term, the issue of Colorado's response to EPA's regulations under RCRA dealing with hazardous wastes was assigned to the State affairs committee, and was further referred to a special interim committee on hazardous waste. That interim committee was composed of Colorado State House members, Colorado State senators, industry representatives, and representatives of local county governments. Anne was appointed acting chairman of this committee.

After a lengthy debate, the committee recommended that siting control be delegated to local county officials, but that EPA be allowed to enforce its own regulations, rather than creating another State bureaucracy when the State had no input into the way in which the regulations would be interpreted and carried out.

Another environmental issue which became a center of controversy, which I think deserves some discussion and consideration by your committee, was EPA's action under the Clean Air Act. Because of a number of conflicts within the legislature, prior to 1979, Colorado had not adopted the reqired State implementation plan [SIP], and the possibility of Federal sanctions against the State loomed.

The general assembly passed a bill mandating further study of Colorado's unique high-altitude air-pollution problems. EPA indicated in early summer of 1979 that this good faith effort would postpone the imposition of sanctions. By late fall, EPA had reversed its position and published a notice of sanctions in the Federal Register, long after the legislature had gone out of session.

The sanctions were imposed, and one of the first tasks facing the general assembly in 1980 was air pollution legislation. Anne Gorsuch was the prime sponsor of the Air Pollution Inspection and Maintenance Act which, although amended somewhat in conference, satisfied EPA's requirements.

In carrying this bill, even though only in her second term, Anne was able to build a coalition that held the basic bill against more than a score of amendments and opponents and which met the core EPA requirements while eliminating the least effective and most costly features suggested by EPA. In her efforts Anne was able to do something which had not been done before, nor since. She was able to pass an environmental bill with support from both the State-rights advocates and the environmentalists.

The final version of that legislation typified Anne's position on the environment. The bill did as much as possible toward reducing air pollution within the limits of effective technology. It avoided placing unnecessary costs on citizens. And it gave the State of Colorado some share of control in dealing with the problem.

That kind of approach, I firmly believe, is what is required from an Administrator of the Environmental Protection Agency. Real pollution problems must be faced. Existing technology needs to be used, not expensive and esoteric hardware which is not ready nor reliable on a day-to-day basis.

The real costs of environmental cleanup and maintenance need to be spelled out, to both the Congress and the public, in order for us to make realistic decisions based not only on environmental needs, but on what we can afford and whether the marginal improvements in the environment are worth the costs. Those regulations which are necessary should be implemented in a way which places as small a burden as possible on Americans.

Finally, if EPA is to require participation from State and local governments, then EPA should allow input and participation from those governments.

With her background and experience, I am convinced that Anne will do an outstanding job not only in maintaining our progress toward a cleaner and safer environment, but in doing so in a manner which is cost effective and which respects the rights of all Americans.

Anne McGill Gorsuch is a rare individual, someone who blends determination with charm, brilliance with disarming directness, political expertise with an understanding of human nature, and thoroughness with economy, and the ability to get the job done without bankrupting the taxpayer in the process.

These personal qualities, while important in any administration appointment, are even more critical for the Administrator of EPA. Because Congress has taken such an interest in the environment, a great portion of the guidelines and goals of the Agency are statutory, which will require an Administrator with both political experience and the ability to deal easily with Congress.

Because EPA regulations often impact State governments directly, the Administrator should also understand State legislatures and appreciate the particular Governors and legislators can have.

Because EPA is faced with the need to meet its goals without an increased budget, the Administrator should be able and willing to remove unnecessary regulations in order to concentrate on the truly important environmental objectives.

In conclusion, Mr. Chairman, Anne Gorsuch has the legislative experience, the professional background, and the personal qualities to be an outstanding Administrator of the Environmental Protection Agency. And I would venture the very finest this Nation has ever had.

I really ask the chairman's pardon and indulgence in going a little bit longer than I normally do, but I thought it important not only that we recite personal characteristics and qualities, but get to the core of the real determining factor in the committee's decisionmaking process, and that is whether or not this lady has the ability and capability and the experience to deal with the problems of the Administrator's job.

I think the record that she has compiled shows conclusively that she meets those qualifications.

Thank you very much.

Senator Stafford. Thank you very much for a very fine statement. I think Mrs. Gorsuch can feel now that with the support of so many distinquished people who know her well, that I have not seen a launching this successful since the Columbia took to the skies about 10 days ago.

Senator Randolph. You will forgive me for saying, I was at the blast off and also at the coming down of Columbia. The only Senator to hold that distinction.

Senator Stafford. That appears on the record.

The Chair is aware, in discussing this with my partner Senators, that Senator Baucus is tightly pressed for time and with the indulgence of our colleagues on the committee, we would yield at this time to Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator Baucus. Thank you, Mr. Chairman. I also want to thank the members of the committee for indulging me in my time constraints.

Mrs. Gorsuch, at this point I only want to make three very brief points because I don't want to take too much of the committee's time.

My first point is my concern that in this rush for cost-benefit analysis and the option and promulgation of rules and regulations that the Environmental Protection Agency doesn't forget its chief mission, which is protection of the environment in our country and the health of our American people. I think it is very dangerous to swing back toward cost-benefit analysis and to worship the god of efficiency and forget that the chief mission of the Agency is to protect the environment. I would like to tell you, very strongly, that it is my personal view that the EPA should continue along the lines of its chief mission, particularly as it begins to make its recommendations with respect to the Clean Air Act because the chief mission of that act is clean air, and I think it is imperative that we follow that mission.

The second point I want to make is my concern that the EPA Administrator, in fact, be the primary policymaker in EPA. There is some concern in this town that there might be a super environmental cabinet headed by, perhaps, Secretary Watt, and Secretary Watt and others will, in fact, be making environmental policy decisions, including those acts under the jurisdiction of EPA.

It is my strong concern that EPA be an independent Agency as it has been in the past, and that EPA itself determine environmental policy.

If, in fact, it turns out that Secretary Watt is determining EPA policy, I would hope that this committee would ask James Watt to appear before this committee as we discuss the Clean Air Act.

My third point concerns the close interrelationships that the United States now has with other countries. We hear a lot about how the Japanese environmental standards are high, yet Japan somehow is able to achieve high rates of productivity increases and we in America seem to be fumbling around in this regard. I hope when EPA begins to address changes in environmental laws that it also informs this committee what other countries do in that same area. That is not to say that we in America should necessarily adopt what Japan does or Germany does in controlling the air and water pollution, but at the very least I think that this committee and the American companies and the public should know what we are dealing with.

We have to live in this world. We have to have a close, interlocking economic relationship with various countries and we are getting closer and I think it is imperative that the EPA and this committee begin to address how other countries handle these problems so we hopefully can make better and wiser decisions.

With that, Mr. Chairman, I have some questions I would like to submit for the record and I hope you answer those as specifically and precisely as you possibly can. (See p. 217.)

Finally, Mr. Chairman, I have another set of questions on behalf of Congressman Andrews that I would ask be included in the record so the nominee could answer those as well. (See p. 270.)

I thank the chairman and members of the committee.

Senator STAFFORD. Thank you very much, Senator Baucus.

The Chair, unless there is objection, would reserve the right to all members of the committee to issue questions in writing and request that they be responded to in writing promptly so that the committee can have that information in making its final determination.

At this point, Mrs. Gorsuch, I have a few comments to make as chairman of the committee.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator STAFFORD. There are obligations which run with an office, regardless of who occupies it. Robert Stafford is not the senior Senator from Vermont; he merely occupies that office for a period in time.

The terms of occupants pass, fading into time. But an office and its obligations continue unabated. The office of the Administrator of the Environmental Protection Agency is relatively new. Nevertheless, it has a special tradition, in part because it is unique.

The office demands special persons and special qualities.

Often the Administrator must stand alone among other political appointees.

Others are charged with protecting the interests of potent political forces. The Administrator protects the elderly, the poor, or the infirm, among others.

Other appointees deal with tangibles like money or hardware. The Administrator deals with qualities like health or pristine waters.

What these groups lack in power, the Administrator must supply. And what they lack in definition, the Administrator must provide.

The obligation to speak for the Nation's elderly and infirm and to protect the air and water is a moral one. But it is also more than that.

The obligation does not flow merely from some abstract sense of justice and morality. It flows from the law. And that is no accident. Nor, at least in the judgment of this Senator, is it a mistake.

There are laws in the United States which say that money is not to be considered in making certain decisions. Dollars are not to be weighed against health, and the Administrator who does, I suggest, so violates the law.

There are laws which say that a decision to protect health is to be made by the occupant of the office of the Administrator, and none other. A person who relinquishes such a decision violates the law.

Those laws have been written carefully. They are crafted to assure that of all officials in the Government at least one will speak out when others remain silent. That is not an obligation of the person, it is a duty of the office.

Mrs. Gorsuch will succeed Douglas Costle. As Administrator, Mr. Costle demanded and was granted regular access to the President. He sought persistently to reduce the unnecessary regulatory burdens imposed by governmental regulations. But he never allowed that goal to compromise the requirements of the environmental laws. Mr. Costle was unflinching in his willingness to make decisions which made him unpopular with vested interests.

Mr. Costle's predecessor was Russell Train. He guided the Agency out of infancy into its maturity. He assured that laws which were tough were also fair. He invested his own personal respect and ability in assuring that old laws were not compromised and new ones were not sabotaged. He was willing to force industries and cities to clean up when and where the law required. It was Russell Train's integrity and independence which laid the groundwork for Mr. Costle's record of progress. But then Mr. Train was fortunate in having inherited a tradition from the first Administrator of the Environmental Protection Agency.

Mr. Train's predecessor was William Ruckelshaus. He, too, adhered faithfully to his obligation to implement the laws protecting air and water quality in the United States. Although an appointee of the President, he never became merely a servant of the Presidency. Instead, he served the American people and the laws of the Nation.

Many will remember that when he moved on to another position in the Government Mr. Rucklelshaus was forced to a choice. Compelled to choose between serving the people or serving the President who appointed him, he chose the people.

None of this is to say that the next Administrator must mirror the attitudes and actions of the previous Administrators.

The office demands innovation, not imitation.

But it also demands an unwaivering independence and loyalty to the law.

Within the bounds set by law, the Administrator of the Environmental Protection agency may choose to take any one of several roads. But the choice of a road must be made by the Administrator, not another. The road must be chosen for reasons permitted by the law, not reasons which are prohibited.

Where the choice is entrusted to the Administrator and the Administrator alone, the decision should remain undistrubed and sometimes even unexamined by others, including the President.

For that reason, the Administrator must enjoy the confidence of the President. Environmental decisions generate enormous political pressures, often from extremely powerful and influential groups. The Administrator will be accused of extremism, ignorance, and imcompetence. The temptation for the President to accede to these pressures will be great. It can be overcome only by the personal relationship of trust and respect, which access to the President builds.

Courage, integrity, loyalty, self-sacrifice, and independence are absolute prerequisites to faithfully discharging the duties of the Administrator of the Environmental Protection Agency. the trust of the American people reside in the occupant of that office. It should not be taken lightly. I know you would not, Mrs. Gorsuch.

I have spoken at length with Anne Gorsuch. I have reviewed her record. She has told me of her ambitions and goals. I am confident that she possesses the qualities which this job demands and believe she will be confirmed.

Senator Randolph.

OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator RANDOLPH. Chairman Stafford, members of our committee and an overflow audience, as you know, Mr. Chairman, we were to meet at 10 o'clock this morning and of necessity the meeting was moved here. As other Members, of course, returned to their States, I had planned and must return to West Virginia, a State that I represent. It will be necessary for me to leave the hearing at 12:05. I regret this very much. I will have many questions, Mr. Chairman. I will submit them in writing and ask Mrs. Gorsuch to reply in writing for the record.

Mr. Chairman, I am gratified that the committee is conducting this hearing on the President's nominee to direct the Environmental Protection Agency. I hope that we will be able to move forward with further consideration of this nomination. EPA is a major department of the Federal Government, and it is a matter of great concern that it has been without an Administrator for more than 3 months of the new administration.

EPA is responsible for carrying out a wide variety of complex and far-reaching environmental programs. This mission, plus the announced intention of the administration to give major attention to the regulatory process, make it imperative that the Agency have an Administrator as soon as possible.

For these reasons, it is also incumbent upon this committee to carefully examine the qualifications and attitudes of the person chosen by the President to direct the EPA. I have met personally with Mrs. Gorsuch, and I look forward to joining with other Members in our discussion of issues today.

Over the past dozen years the Committee on Environment and Public Works has been instrumental in developing the laws which have given substance to our national commitment to a clean and healthy America. Enactment of the hazardous waste "superfund" act last year complete the establishment of a legal framework through which we can address virtually every major environmental problem.

No action of the Congress, however, can be considered adequate for all time. That is why the committee will devote a major portion of its time during the 97th Congress to reviewing the Clean Air Act and the Clean Water Act. We want to determine the progress made in achieving the objectives of the law. We want to determine what modifications, if any, are necessary in the light of contemporary conditions. We want to assure that environmental goals are pursued in a way that is compatible and equal with other national priorities.

We have learned over the years, however, that the way in which a program is administered can be just as important as the statute itself. On more than one occasion, programs have been carried out in ways inconsistent with the intent of the Congress.

I believe the desire of this committee is to make these programs work, not to retreat from the commitments we have made to the citizens of our country.

Public opinion surveys continue to show that the American people strongly support environmental improvement. If this support is to continue, there is a clear burden on the Administrator of the EPA not to reject environmental goals but to establish and carry out a regulatory process that is fair, balanced, and workable and continues the progress made in recent years.

That progress has been greatly helped by its bipartisan nature. The EPA was created by a Republican President. He and his successors of both parties have worked with Democratic Congresses on environmental issues. Just as pollution is not constrained by State or national boundaries, its prevention is not inhibited by political party affiliation.

Mr. Chairman, to expedite the confirmation process for Mrs. Gorsuch, several members of this committee submitted questions on major issues to her last week. We requested written responses prior to this hearing so that we would have a substantive basis on which to discuss her concept of the job for which she has been nominated and her attitudes toward the work of the Agency. We did not receive advance responses from Mrs. Gorsuch, so we will want to explore those issues today.

I also welcome the opportunity to hear from the other witnesses who will appear today. They will help us to build a record of diverse viewpoints on which to consider this nomination for one of the most important positions in the Federal Government. Thank you.

Senator **Stafford**. Thank you very much Senator Randolph for an excellent opening statement.

The Chair is about to recognize Senator Chafee, but I did want to say to our distinguished guest, Congressman Kramer, that we are delighted to have him stay here with us as a guest, but we would understand it if he felt he needed to go to the other side. That is up to you, sir, if you feel you should go over.

Representative **Kramer**. I would like to stay a few more minutes.

Senator **Stafford**. We are delighted to have you here Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator **Chafee**. Thank you very much, Mr. Chairman. I would take this opportunity to say welcome to Mrs. Gorsuch from our committee this morning.

We need to quickly fill the position of Administrator of the EPA which is, of course, the chief enforcer of our environmental laws.

First I would like to say that I think all committee members owe our thanks to Walt Barber for the fine job he has been doing as Acting Administrator. And I know he looks forward to resuming his responsibilities with the EPA Office of Air Quality Research in North Carolina.

I think it is important to bear in mind what EPA stands for. EPA means Environmental Protection Agency, and this is the prime Government Agency charged with protecting and improving the quality of our environment. Since it was formed in 1970, the agency has been a vigorous exponent in implementing and enforcing our Nation's important environmental laws, clean air, clean water, now the superfund law.

During the past decade we have made tremendous gains in abating many forms of pollution and in many respects I believe our

Nation has not become the leader in the world in environmental protection. And these substantial achievements have been made possible through the hard work and dedication of the Federal Government and the State and local governments as well as a host of private organizations, many of which are represented in this room today.

But despite the progress that has been made in cleaning up our air and water and controlling toxic wastes and preserving our natural resources, much remains to be done. EPA alone has estimated 50,000 abandoned toxic waste dumpsites in the country and about 2,000 in need of immediate cleanup assistance. I know from my own experience in our State that the improper disposal of toxic waste has caused critical health and safety problems and indeed great anxiety among those who fear their water will be poisoned.

So, we need strong leadership in this area and I am confident that you, Mrs. Gorsuch, as EPA Administrator, will lead the way in addressing this serious issue of toxic waste.

Another important area where we need strong leadership in the executive branch is in the clean water program. Now the industry pollutors have done a fine job; 80 percent of them are now in compliance. But the story with the municipal grants has been different. Some $35 billion has been appropriated under this program since 1982. But only $4 billion of the $35 billion represents completed projects that are on the line and working. And, then, of course, many of them indeed are not working and because we have the recent GAO report that says 50 to 75 percent of the plants are in violation of their permits.

The construction grants program and the wastewater treatment, I feel, is the costliest public works program in the history of the country with the exception of the interstate highway program. And given the national effort to balance the budget, we can except reductions in funding for this program as the administration already indicated. But we will be looking to you to the EPA agency as a whole to work closely with us on developing creative ways in which we can still meet the water quality goals in the face of reduced funding.

The Clean Air Act is another monumental landmark law which has had tremendous success and there have been critics of it, and we have heard critics during the opening hearings that we had, but I think it is well to bear in mind the achievements that have been made on the control of the emissions of the regulated substances. Those have dropped by 40 percent in the past decade which is an extraordinary achievement. Sulfur dioxide levels have decreased by 65 percent, and carbon monoxide levels by 35 percent. So the Clean Air Act is working and with some fine tuning I think we can make it work even better.

But today we hear more and more about an environmental backlash—that we have gone too far—that our environmental programs are too costly and are stifling productivity. Now, it is true in massive programs undertaken in a short period of time, excesses and complications are bound to arise, but the accomplishments of our environmental programs far outweigh any drawbacks.

We made a tremendous investment not only in billions of dollars, but in time and effort to develop our environmental protection programs and we have reaped great benefits from those efforts and we should strive to make this decade as successful as the last one was in terms of environmental achievement.

There are those who, as I say, have charged that the environmental movement is passé, but I don't think that is so. Tens of millions of Americans cram our parks and wildlife refuges and they fish in our streams and lakes, and they hike our trails, and they participate in scores of outdoor recreational activities, and they want clean air and they want clean water, and they want to enjoy the natural resources of this Nation.

The last election, many said was considered a referendum on the economy in which environmental issues were told to take a back seat. This just isn't so, in my judgment. In my own State, voters overwhelmingly approved the largest bond issue in the history of our State to repair one city's wastewater treatment which was a prime polluter of our Narragansett Bay. That bond issue was approved by 35 of our 39 communities, even though many of those communities were already paying for their own treatment plants. And that bond issue received the highest number of votes and the highest percentage of any bond issue on the ballot and in California voters approved the bond issue of nearly a half a billion dollars for the acquisition of parks. In Oregon voters went on record to oppose any further construction of nuclear powerplants until the solution was found to nuclear waste disposal.

It seems to me those are hardly votes that indicate that the Nation has turned its back on environmental concerns.

And the progress we have made in the national environmental cleanup effort has received broad public support, and I hope you agree with me that support is still there and will continue.

We are now in an age of steady demands on our limited natural resources. Eveyone agrees we need homes and factories and highways and mines and lumber. But, what must be sacrificed to meet those demands? What are the trade offs and how do we balance them? I believe we can have economic prosperity in this country and, at the same time, preserve its natural beauty and resources.

The Administrator of EPA, the Environmental Protection Agency, is the top environment job in this Nation. It is always a challenging endeavor and will be even more so in the restricted financial environment that is now taking place. But, I look forward to working with you and to hear from you your views, Mrs. Gorsuch, as you approach this difficult and demanding job.

Thank you, Mr. Chairman.

Senator **STAFFORD**. Thank you very much, Senator Chafee.

Mrs. Gorsuch, Senator Baker would have liked to have been here this morning to make a statement on your behalf. He has given me his statement and at this point I intend, without objection, to place it in the record. He has asked me to express his encouragement to the committee which certainly needs it and to you who may not need it as much as the committee does.

[Senator Baker's statement follows:]

STATEMENT OF
SENATOR HOWARD H. BAKER, JR.
CONFIRMATION HEARINGS
NOMINATION OF ANNE McGILL GORSUCH
FOR ADMINISTRATOR OF EPA
May 1, 1981

I want to thank the Committee for the opportunity to express my thoughts as we begin these hearings on confirmation of the fourth Administrator of the Environmental Protection Agency. We've come a long way since EPA was created in 1970 and the partnership this Committee has formed over the years with EPA is a good one. I remember earlier confirmation hearings and earlier debates on environmental issues, as well as long, hard-fought struggles with Ed Muskie, Bob Stafford and others on this Committee to define our goals and put supporting legislation in place. The legislation we developed is not perfect, but it goes a long way toward meeting the objectives of environmental and natural resource protection that this Committee set out.

During the course of these hearings, I trust that Ms. Gorsuch will provide us with a good understanding of her philosophy and beliefs on the environment--from protection of our air and water to protection of the public health. I will be very interested in her ideas regarding how she intends to carry out the critical job of running EPA.

For the past decade this Committee has worked hard to develop environmental legislation we can be proud of. We have strived for and achieved in many cases a balanced approach to environmental and natural resource protection. EPA has taken these laws entrusted to them by the Congress and worked to develop strong, viable programs to achieve the goals set out by Congress. I for one want to see these programs continue to move ahead.

The people of this country have indicated time and again their desire for a clean, healthy environment. Polls and surveys have shown them unwilling to unnecessarily sacrifice clean air and clean water. This Committee is no different: we are a microcosm of this nation. I am hopeful that during the next four years we can begin to fine tune our environmental legislation while maintaining the integrity and purposes of the laws we have worked so hard to develop.

EPA's Administrator has always worked closely with this Committee and I encourage Ms. Gorsuch to continue to foster this relationship which is a great resource to the Agency. I believe the progress we have made in environmental enhancement and protection over the last decade is significant; this success is strongly linked to the good working relationship between EPA and this Committee.

In closing, I would like to commend Walt Barber who has been serving as Acting Administrator at EPA. Walt has served very capably in this position and his cooperation and insight have been invaluable to us in the Congress. I trust he will maintain an active role in the Agency once we get a new Administrator in place.

Senator STAFFORD. Senator Hart, do you have an opening statement?

OPENING STATEMENT OF HON. GARY HART, U.S. SENATOR FROM THE STATE OF COLORADO

Senator HART. Thank you, Mr. Chairman.

I would like to join the members of the Colorado delegation in welcoming Mrs. Gorsuch before us. My colleagues on the delegation have more than adequately outlined her background, her qualifications and, of course, I subscribe to all they have said in that regard.

I am pleased that the President sees fit to nominate so many Coloradans to key positions. I happen to believe that is because our State is on the forefront of what this job is all about.

As some of my colleagues have said, the position that we are here to consider today is not one merely of carrying out a political agenda for the President, but enforcing the laws of the land. Until those laws are changed, they are still the law and I want to subscribe in that respect to the excellent statement of the chairman of this committee outlining the nature of the job of Administrator of EPA. I think that was a more than adequate description of what you are to face, Mrs. Gorsuch.

I would guess that the attendance here at this hearing, as Senator Chafee has indicated, is in large degree a comment on the concerns that still affect this country in the 1980's: A quality environment and a sound and healthy economy. It seems to me the job that you are to undertake is not to dismantle but to reconcile—to reconcile those two goals, somehow to protect the public interest where health and safety are concerned, as the Congress and your predecessors have attempted to do in the past decade, with the need to have a sound and healthy economy.

That is a difficult, difficult assignment. Contrary to what most of us as politicians would like to believe or even would like our constituents to believe, there are no simple and easy answers. It would seem to me we can get on with that job a bit more, not only in this connection but a lot of connections if all of us, particularly in the Congress, would take an oath once a week or once a month that we oppose unnecessary regulation and we are still opposed to waste, fraud, and abuse, and then face the real problem of how to reconcile those very complicated and difficult public policy goals.

Mrs. Gorsuch, along with my colleagues, I look forward to hearing your observations on these complex reconciliation problems, particularly in the task that faces this country this year of the modernization and streamlining of the clean air law.

We take the position that, unfortunately, too many in industry have taken, that all we have to do is abolish those laws or seriously undermine them, and that will solve this country's problems; or, on the other hand, we can take the position they are sacrosanct and they can't be touched, they can't be changed, they are sacred. I think that extreme is equally inappropriate.

What we want to hear, and what I am sure you will address, is the question of how to streamline without emasculation and that is going to be very very difficult.

Thank you very much, Mr. Chairman.

Senator **Stafford**. Thank you very much, Senator Hart. We know of the very important part you played in the National Air Quality Commission deliberations and all of these issues that are now before our Committee.

Senator Domenici, you have an opening statement?

OPENING STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator **Domenici**. Very brief, Mr. Chairman.

I want to welcome Mrs. Gorsuch here and indicate that I look forward to her testimony and to the testimony of those who are scheduled after her. I heard that there were some who thought this nominee was not qualified from the standpoint of professional experience. I wondered what the qualifications of those who we hold in such esteem who occupied this position heretofore, and I am amazed. I would like to submit for the record Mr. Ruckelshaus' background, the first administrator of this agency. (See p. 25.) The parallel between this nominee and Mr. Ruckelshaus in terms of experience prior to accepting the role is amazing. In fact, I would think if one had to put them side-by-side, one would say Mrs. Gorsuch is a far more experienced lawyer than he was, a far more experienced legislator than he was, and occupied more public positions of trust than he did. Her background is excellent from the standpoint of pure professionalism. I personally want to thank you, Congressman Kramer. Generally speaking, when people in Congress come and support a nominee, one expects it to be a rather eloquent statement—we want her in the job—but it helped me to know what someone who served with her felt about the nomination and to explain in some detail what I heretofore have seen just in black and white on a piece of paper. So, I thank you for that.

I want to say right off, I don't think there can be any question that in terms of professional qualifications, intellectual capacity, and previous public service, that she is an eminently qualified nominee.

I assume there can be an issue of attitude: how do you feel about protecting the environment in this very complicated world we live in with the request for economic prosperity, and I will be interested in some of your attitudes and will ask you some questions in that regard.

There seems to be an attitude around that perhaps there should be a need for putting more money in EPA than the President of the United States wants, and that the nominee ought to come before this committee and advocate many more millions of dollars for this agency than the President has recommended to this Congress, for which this Senate has voted on the floor and for which the Budget Committee Senators voted. For those who assume that position, just ask yourselves this question: Wouldn't it be an exciting thing for the President to have his nominee come down here and say right off, "I don't agree with you, Mr. President. We need another $300 million in EPA." I assume she would not have been nominated for this position had she taken that position.

I have read with some interest, statements of those who were concerned about her nomination. I find those statements raise two issues. One is that apparently she won't act independently. I would just like to address that. I have read about the history of this agency and it is a very strange one. It is an executive agency. Anybody that thinks that it isn't, is wrong. It was created by Executive order. The President is the one who appoints, the President is the one who can fire. There can't be any question this is an executive agency, it is not a CAB or any of the four arms of Government.

There is one area, though, that I want to question you about. There isn't any question you are entitled to confer with the President. It has been stated that one who is held in esteem in this position conferred with the President regularly, the very last Administrator we had. There is an area that does concern me: the Agency has some qualities of independence when it makes formal rules and passes formal regulations and conducts a formal hearing process. I would like to hear your views on how you consider that process works because it is under the jurisdiction vis-a-vis those in the administration, those in the private sector, those with special interests and those at this independent agency.

Another matter raised by those who oppose this nomination is that Mrs. Gorsuch has many friends in the administration. It has been said that she is particularly close to Secretary Watt, and perhaps close to other people in the administration, and somehow that ought to have a damaging effect on her capacity to handle this job.

Well, I satisfied myself on that, too, in talking to people who have worked with this lady. If seems to me that if someone thinks they can put a lady here to take over this job, who is docile, and who people are going to tell what to do, then the President nominated the wrong person. If Jim Watt thinks that, he has another think coming. She will be her own person.

So, I look forward not only to your statement, but I would like to hear from those who have concerns about your appointment and I hope you listen to them, also. I think this is a process of learning what the job is all about, but from everything I have been able to read, there is absolutely no reason for this committee and the U.S. Senate not to confirm you with dispatch and put you in that agency so you can start this very difficult job.

Thank you.

[Mr. Ruckelshaus' background, previously referred to by Senator Domenici, follows:]

BACKGROUND OF WILLIAM RUCKELSHAUS

1. 1960-62—Deputy Attorney General assigned to Indiana State Board of Health.
2. 1965-67—Minority Attorney, Indiana State Senate.
3. 1967-69—Indiana House of Representatives, Elected Majority Leader.
4. 1968—Nominated by Indiana Republican Party as nominee for U.S. Senate.
5. 1960-69—Law firm.
6. 1969-70—Assistant Attorney General of United States, Civil Division.

Senator **STAFFORD**. Thank you, Senator Domenici.

Senator Murkowski.

OPENING STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM THE STATE OF ALASKA

Senator **MURKOWSKI**. Thank you, Mr. Chairman. I want to express my warm welcome to Mrs. Gorsuch this morning. It is a pleasure to be able to have her come before this committee to discuss her role and the functions of the Administrator of the Environmental Protection Agency.

Let me state at the outset that she is qualified for this position and brings with her a wealth of experience that will be to the benefit of the Environmental Protection Agency.

The position she is about to take, when confirmed by the Senate, is certainly vital to our country. She will be the guardian of our public health—a role for which she is well suited. She has met with many Members of the Congress and I am sure she met with all the members of this committee. It is invaluable to the consideration and the issues of the legislation before this committee that we have open and continuing exchange of views with the Administrator of EPA.

So far, she has listened and responded well to our concerns. I hope and feel sure this will continue.

Anne Gorsuch has the unique background of having served, as has been pointed out, in the Colorado State House of Representatives. She understands the legislative process and from her own firsthand knowledge she understands the importance of working with the legislative branch of Government. This experience will enhance her ability to function effectively as the Administrator of the Environmental Protection Agency.

I have had discussions with Mrs. Gorsuch over the past few weeks to discuss her views on the role of the Administrator. I have found her to be competent, intelligent and sharp. I have no doubt about her ability to deal with the complicated issues that will confront her as Administrator. I think that can aid this committee during the legislative processing, her knowledge of how our laws have actually affected our States, our people, our businesses, our ecology and our environment. Her legal background, which is extensive, can aid her on the committee as the environmental laws and regulations are considered and implemented.

I think her administrative skill is evident by the remarks of my colleague and the examination of her resume is truly outstanding. And it may just be my observation, but as a freshman U.S. Senator participating in many hearings, it seems that the first question we don't ask of a man is, What are your administrative skills, but the first question we ask of a woman is, What are your administrative skills? My point being an obvious one, it only takes a short conversation with Anne Gorsuch and you certainly learn that she has outstanding solid administrative skills.

The members of this committee will be hearing from a long list of people who express concern about the intent and ability of Mrs. Gorsuch to fulfill the responsibilities of the Administrator of EPA. I look forward to the opportunity to hear from the legislators, the businessmen and the Congress Representatives who have worked with Anne Gorsuch for it is these people that know her to be intelligent, committed and knowledgeable.

It is my intent to support the nomination of Mrs. Gorsuch as the Administrator of EPA. Furthermore, I will support her confirmation when her nomination comes before the Senate.

I wish Mrs. Gorsuch well during this confirmation operation and I look forward to working with her as the Administrator of EPA.

Thank you, Mr. Chairman.

Senator **Stafford**. Thank you very much.

Senator Abdnor.

OPENING STATEMENT OF HON. JAMES ABDNOR, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator **Adbnor**. Thank you, Mr. Chairman.

I want to welcome my former colleague, Ken Kramer, to the committee, he gave an extended introduction.

I just wanted to say, from my own visit with Mrs. Gorsuch, and from reviewing her background and her record, I am convinced she is going to be an excellent EPA Administrator and I, for one, am looking forward to working with her. I also would like to commend Senator Domenici for his statement; it is an excellent statement.

I am certainly looking forward to hearing from you. I hope we have that opportunity now.

Thank you very much.

Senator **Stafford**. Well, now, Mrs. Gorsuch, since you have had to live through the experience of what we call opening statements, it always gives the witness a chance for understanding of the people's views that she has to deal with. We are very happy to invite you to give us an opening statement, which you may do verbatim from the one you have given us, or, it will be placed in the record in total and then you can summarize from it, whichever you desire.

Senator **Domenici**. Could I make an inquiry here? I get along with the press, and I love them, but it seems to me that once we have made our opening statements and the nominee begins to address the Senators, we don't have to have the press between us and the nominee. She shouldn't have to speak over them. Hasn't it been our practice that they take the pictures and she talks to us instead of the people in between?

Senator **Stafford**. I think it would be preferable if the press could move to the side.

Now, with nothing between us, Mrs. Gorsuch, we are glad to hear from you. I don't know if that is better protection.

STATEMENT OF ANNE McGILL GORSUCH, NOMINEE FOR ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Mrs. **Gorsuch**. First of all, I would like to acknowledge and gratefully thank the Senators who chose to introduce me and those who chose to indicate their support, and further those that have chosen the opportunity to give me their views of the function of the Administrator and note their concerns.

Mr. Chairman and members of the Senate Committee on Environment and Public Works:

It is a singular honor and privilege to appear before you as President Reagan's designee for Administrator of the Environmental Protection Agency.

As you may know, the Administrator's position is one which I actively sought, and I feel that my reasons for so doing are relevant to your deliberations today.

In my opinion, and I am confident that you would agree, the position of Administrator of the Environmental Protection Agency presents one of the most challenging and critical opportunities in Government to formulate and implement significant domestic policy.

In light of the policies of President Reagan, the challenges and opportunities of the position are enhanced. The Administrator must manage one of the largest Federal agencies in America—large both in terms of numbers of employees as well as budget—to implement policies which can achieve the important national objective of enhancing and improving our national environment in a manner that accommodates the objectives of change which are the hallmarks of this administration. The task presents enormous opportunities and challenges.

The President is committed to the preservation and enhancement of environmental values, and that is a commitment I share.

The President is committed to achieving a new federalism in which the decisions and the power to implement those decisions will be shifted from the banks of the Potomac back to the level of government which is closest and most accountable to the people it serves. I share that commitment.

The President is committed to regulatory reform, and here I believe it is important to emphasize that the reform is not limited to withdrawal of unnecessary or overly burdensome singular regulations, but envisions a much broader scope involving the process by which new regulations are formulated and current regulations evaluated.

We should seek and accept input from all points of view, evaluate alternatives in light of the best possible information, and then select the least costly options—in terms of both indirect and direct costs to the consuming public—consistent with the goals and policies of the law. I share the President's commitment to the goal of regulatory reform. I am confident that you will concur in my judgment that there is no greater opportunity to effectuate that goal than the opportunity to serve the people of this country as the Administrator of the Agency charged with developing the regulatory framework for such vital industries as farming, steel, autos and mining, to name a few. How such industries are regulated impacts the daily lives of each of us through our utility bills, the market availability of new chemical substances, and the control of pollutants in our air, water, and land.

Though the following is not intended to be exhaustive, we know that the President is committed to achieving our national goals with expenditures of less of the taxpayer's money, that he is committed to the development of domestic energy resources, to the careful husbanding of our natural resources, to the revitalization of industry, to the creation of new jobs, to the elimination of the governmental causes of inflation, and as I stated earlier, most certainly to the preservation and enhancement of environmental quality. I share those commitments and recognize the great opportunity to participate in the achievement of those goals, as a public servant exercising the powers and duties granted by Congress to the Administrator of the Environmental Protection Agency.

The challenge of administering the Agency in a manner which will achieve those goals is enormous and intricate—one which I am eager to undertake.

While there is no organic act which delineates the several duties of the Administrator, it is clear from an examination of the several statutes that the requirements for the position are several. The Administrator must be an experienced policymaker and an effective communicator of the policies developed, must have the ability to make decisions within broad grants of discretionary authority, must be able to understand and implement policy within the framework of a budget, and must also be a careful manager of time and resources.

Additionally, the Administrator of the Environmental Protection Agency is charged with several judicial functions requiring the careful balancing of all relevant evidence and the independence of thought necessary to arrive at equitable decisions.

I appreciate having had the opportunity to meet with most of the members of this committee on an informal basis, but in light of the requirements, I feel that it is appropriate here to formally acquaint you with some of the elements of my prior experience and training which may be relevant to your consideration of the President's nomination, before discussing the specific objectives which I intend to pursue in the position.

I do not come before you as one of a select handful of people who can claim to have managed a company or Government agency of the size and with the scope of the Environmental Protection Agency. I do, however, feel that my education and experience provide me with the broad background sufficient to warrant your endorsement of the President's selection.

I was born in the State of Wyoming but my family moved to Denver when I was a young girl, and it has been my home ever since. I received most of my formal education in Colorado, graduating with a bachelor of arts from the University of Colorado in 1961 and my degree from law school from the same institution in 1964.

My education at the undergraduate level concentrated on political science and economics. I was fortunate to have the opportunity to study in Mexico City at various times prior to the completion of my law school education, and to participate in the Fulbright program in India immediately afterward.

As a long-term Coloradan I come before you with a deep appreciation of the unique beauties which we enjoy in our environment—the majesty and grandeur of the Rocky Mountains, the openness and sense of space of our eastern plains, a climate which enjoys the variety and change afforded by each season of the year. As a westerner I come before you with a profound appreciation for the role that water plays in every aspect of our lives, for the necessity of its conservation and beneficial use.

I have actively pursued the practice of law in various capacities in the last 14 years and the experiences have been diverse.

Among my first pursuits in the legal profession, I shared a job with a fellow attorney and good friend who is present here today, Mrs. Ann Allott. The sharing of responsibilities came as we endeavored to continue our professional careers while starting our families.

Mrs. Allott and I were assistant district attorneys in Jefferson County with primary responsibility for juvenile prosecutions and the collection of money from nonsupporting parents.

In that position I had a unique opportunity to come to appreciate the necessity for careful exercise of discretion. As you gentlemen are undoubtedly aware, the grant of prosecutorial discretion is among the broadest and most unfettered enjoyed by any public official. In its exercise there is a necessity for a full understanding of the needs of the community to appropriately prioritize the expenditure of time, budget, and resources. A decision to prosecute on certain cases is, implicitly, a decision not to act upon others.

That experience in the district attorney's office likewise prepared me for the management function of the position which I now seek. It was our challenge and our opportunity to refurbish and, in many instances, to create, the component parts of a management system which allowed for the efficient ongoing collection effort. We established a collection system which called for the orderly referral of AFDC recipients; allowed for the prompt handling of nonwelfare petitioners; initiated investigative efforts where necessary; corresponded with responding or initiating officials in other jurisdictions and other States; scheduled court time; provided for prompt followup; established collection procedures in other ranches of the court system and created an internal system for prompt and efficient followup on delinquencies.

That experience served me well in my next professional position which was as a gubernatorially appointed hearing officer for the State of Colorado; in effect serving as an administrative judge for a variety of State boards and commissions.

My entire professional legal experience, especially my service as a prosecutor and Colorado hearing officer, has given me a deep-seated appreciation for the necessity of knowledgeable and independent judicial decisions. The cases involved allegations of statutory or regulatory violations by licensees and practitioners and required the unbiased consideration of all evidence presented, an unbiased and impartial application of the law to the evidence adduced. The laws with which I dealt prescribed such unrelated topics as consumer protection, professional standards, regulations to protect the public health, to name but a few.

It was an experience which I thoroughly enjoyed and which stood me in good stead as an elected State legislator, where one is called upon to make decisions in seemingly unrelated policy areas and where decisions must be premised on a fair and impartial hearing of all interested parties, a weighing of the competing policy objectives, an awareness of the fiscal and resource restrictions, a sensitivity to the needs of the people served, and a broad overview of the needs of the State as a whole.

As you know I have just completed two terms in the Colorado General Assembly and like many of you who come to the Federal effort from a State legislative background, I am sure that you will agree that it is a valuable training ground.

In my first term, beginning in 1977, I served as a member of the Finance Committee, the Appropriations Committee, and as vice chairman to the Judiciary Committee. I was the prime sponsor of several pieces of legislation. Among my efforts was a complete rewrite of the sentencing provisions of the Colorado Criminal Code which changed the structure of our law from indeterminate sentencing to presumptive sentencing, and which is now, after a stormy course, the law of the State. I was selected outstanding freshman legislator in a press poll of my peers, lobbyists, legislative staff.

In my second term I served as a member of the transportation and energy committee, and as chairman of the house state affairs committee. Additionally, I served as the majority leader's designee on the joint house-senate legal services committee and became its chairman in the final year of my legislative activities.

As chairman of the house state affairs committee, I worked with a relatively small but effective staff and with fellow members of the committee to resolve most of the politically sensitive measures introduced in the house. Excluding appropriations measures, of the more than 1,300 bills and resolutions introduced in the house and forwarded to the house by the senate in 1979 and 1980, 245 (or more than 18 percent) were referred to State affairs.

We acted on every bill assigned to the committee, and reported out 176. We built a strong record of listening to all interested parties, working with fellow committee members and reporting back to the assembly in a timely fashion. It is a record I intend to continue.

The transportation and energy committee on which I served was assigned primary responsibility for most of the bills formulating the State's response to the requirements of the Clean Air Act.

The legal services committee, on which I served first as a member and later as chairman, exercised the statutory responsibility for developing the budget and policies of the legislative staff, which provided all drafting, statutory publication and revision, rule and regulation review, and legal advice to the general assembly. Additionally, legal services committee was the focal point for implementing the Colorado initiative in regulatory reform.

I was one of the primary advocates of a bill which established the regulatory review process. Rules promulgated by the 20 departments in the Colorado State government fill a 12-volume code, which, according to the legislation, is to be reviewed every 4 years for consistency with statutory authority and legislative intent.

In the 2 years in which I served on the committee, more than half of the codes—by volume—were reviewed, a full third during my chairmanship. In addition, more than 600 new rule submittals were reviewed in 1979 and 1980. It may be relevant to note that this additional work has absorbed without adding any attorneys or staff.

As the prime house sponsor of the air-pollution-control inspection and maintenance legislation of 1980, it was necessary to bring three vastly divergent factions behind a compromise bill that does meet the requirements of the Federal law and, as estimated by EPA will reduce CO emissions sufficiently to allow even Denver with its peculiar high altitude problems, to meet the ambient air quality standards by 1987. Having labored on Superfund, I am certain you gentlemen understand how fragile such coalitions can be. Difficult decisions and compromises must be made. EPA's decision to reconsider the adequacy of Colorado's inspection and maintenance proposal of 1979, occurring as it did after the legislature was out of session and after contrary prior representations, did not improve State/Federal relations, nor did it provide the healthiest atmosphere for unimpassioned decisionmaking. Nevertheless, there is a positive lesson to be learned from it. The Agency must be cooperative and consistent in its dealings with the States if State cooperation is to be forthcoming.

As a member of the majority party caucus, I took a very active role in evaluating, on a line-by-line basis, appropriations for the budgets of all departments of State government. The decisionmaking process was especially challenging in the final 3 years of my legislative experience, when total expenditures were limited, by legislation we enacted, to no more than 7 percent above the previous year's budget.

The interim committee on hazardous waste—which I chaired—heard testimony from the health department, local government officials, interested individuals and industry representatives, and determined that no existing or immediately foreseeable situation warranted continuing the State's authority to override local siting decisions.

We also determined that it would not be in the best interest of the State of Colorado to assume primary responsibility for implementing the Federal hazardous waste program (the Resource Conservation and Recovery Act); the disadvantages simply outweighed the advantages. I fully expect that a familiarity with the major and minor elements which make assumption of a Federal program undesirable will be a major asset in the job of Administrator.

Unquestionably, the policymaking, communication, management, and budgetary skills honed in legislative service, and the respect for and understanding of the legislative process will be exceedingly valuable in meeting the challenges inherent in the administration of the EPA.

These experience likewise have given me a rich insight into the substance of some of the major environmental issues of our time, and equally importantly, the role of the States and their relationship to EPA.

As a corporate attorney for Mountain Bell, I served as an advocate and a mediator, listening to and coordinating the sometimes divergent views and objectives of various departments, ascertaining policy which best served the interests of the corporation as a whole, and often persuading the various departments to concur.

Mountain Bell is the largest employer in an eight-state region, so it was a continuing challenge to mesh the diverse interests on any one issue into a program acceptable to concerned departments in all eight States.

As directly applicable and important as these experiences are, I would not have been able to absorb so many of the necessary management skills, had I not had the experience of being a working mother. Juggling the roles and responsibilities of being a full-time mother and part-time attorney, legislator and politician is among the ultimate in management challenges.

As Administrator-designate, I recognize three responsibilities of paramount importance: The protection of public health and welfare through restoration, preservation, and enhancement of the quality of our environment; faithful implementation of the intent of Congress as expressed in our environmental protection statutes; and the development of policies that accommodate the national objectives articulated by the President. It is my expectation, if confirmed, to play an active personal role in the development of these policies as they affect EPA and the laws it administers. I have been assured personally by President Reagan that this will be the case. If confirmed, these will be my primary objectives, and I would expect the American people to judge my performance accordingly.

My implementation of these objectives will include emphasis in the following initiatives.

We must recognize that EPA is affected today by economic, energy and environmental considerations largely unknown when many of the laws were passed. The public is no less committed to environmental protection, but increasingly aware of the need to balance all of these interests. EPA's programs must reflect this public awareness.

We can and we shall build upon the substantial accomplishments of the last 10 years. We must continue to improve the quality of our air and water, and avoid any major backlash by selecting the options that provide the best return for the enormous investment involved.

Our approach to standards and regulations must be result-oriented to achieve the full objectives of national policy. We must focus our thinking on positive approaches that provide the flexibility to encourage innovative alternatives that can achieve the desired results in an equally or more efficient manner.

Permit regulations should be streamlined to eliminate unnecessary steps thereby reducing delays and costs of compliance without sacrificing either due process or environmental protection. The public does not object to the basic laws in place, but it does, with good reason, object to paralyzing delay.

I believe that rules and regulations issued by the Agency can and must reflect better understanding and consideration of intermedia relationships.

We can and we must improve the scientific and technical basis for the standards and regulations developed. A policy change to require peer review earlier and more frequently in the process could make a tremendous difference. I feel fortunate to have an individual like Dr. John Hernandez designated to be Deputy Administrator. He has the scientific and technical expertise to identify other improvements that can be made.

We shall restore the States to their rightful place as partners with the Federal Government in policymaking as well as policy implementation.

In developing and implementing our national environmental program, we must understand that its success requires the commitment and investment of the private sector, and that ultimately the cost is paid by each individual citizen. Companies do not pay for these costs. You and I, as consumers, do.

We can and must simplify and streamline the regulatory process. Rules too complex to be understood serve only to alienate the public from the mission of EPA, and that mission is too important to be left solely to the regulated and the regulators.

Again, as I stated before, we have made considerable progress in improving the quality of our environment.

Before leaving office, my predecessor reported that, at this point in time, large industrial facilities have a very high compliance rate with water pollution standards.

Much remains to be done and can be done. The public is fully committed to environmental protection, while simultaneously aware of the need to improve our economy and develop affordable domestic energy resources. A delicate balance must emerge.

I believe EPA must take the lead in developing that balance, cognizant of its opportunities and constraints, its potential and limitations, its historic mission and our changing times.

EPA must be nonconfrontational in its approach, leading by action and encouragement. I assure you that, if confirmed, this will be my guiding credo.

I am confident that President Reagan did not ask me to serve because of any advocacy position I have taken. I have not made my living fighting for or against environmental laws and regulations.

I am convinced that he has asked me to serve because he believes that my education and experience have trained me to take the broad overview necessary; that my record in the Colorado State legislature indicated a strong commitment to hearing all points of view and forging workable compromises; that the nature of my public service has made me particularly sensitive to the elements which make Federal programs so annoying and sometimes even unacceptable to the American people; and that—above all else—my total efforts and talents will be committed to restoring, preserving and protecting the environmental heritage that is a critical, intergral part of the legacy our children and grandchildren must inherit if they are to know the same freedoms, and enjoy the same choices, that we have known.

Mr. Chairman and members of the committee, I would like to thank you and your distinguished colleagues for the many courtesies you have extended, and for this opportunity to appear before you.

As I stated before, the challenge of the position is enormous and intricate, and one which, with your advice and consent, I am eager to undertake.

I will be happy to respond to any questions which the members of the committee may have.

Senator **Stafford**. Thank you very much for a very penetrating and thoughtful statement. It would be the Chair's intent, if my colleagues are agreeable, that rather than the 5-minute rule we proposed in the past, we have a 10 minute rule today for questions. Would that be agreeable to members, 10 minutes rather than 5?

It would also be the Chair's intent, if agreeable, that we continue and see if we can complete questioning Mrs. Gorsuch without a break in the proceedings. Would that also be agreeable to members?

Seeing and hearing no objection, that is the way we will proceed. The Chair will start and will time himself accordingly.

Mrs. Gorsuch, when President Reagan's decision to appoint you was first announced, a variety of organizations expressed what can be mildly called dismay. They were concerned that you were not an environmentalist. That term, environmentalist, is best defined by specific positions on specific issues. But it also generally embodies the view that air and water are in and of themselves national resources which are to be safeguarded, first come, first served. I would appreciate it for the committee if you would take 1 minute and tell us your view on whether air and water quality, public health and other national assets should be protected by the Federal Government and if so, how.

Mrs. Gorsuch. Senator Stafford, I would just observe that perhaps inherent to your question, there is a conflict between the concept of private property and protection of public health and welfare. I don't see that conflict. I think both have existed and can in the future, that we can fully accord the right of private property and at the same time balance that against a concern for the national objectives, which are protection of the public health and welfare.

It is interesting to note, however, that the Clean Air Act, for instance, through the PSD program and the ability to acquire increments of emission, treats the air as if it were on a first-come, first-served basis, as does the approach of some parts of the Clean Water Act.

But to get back to what I think is the thrust of your question, I do not believe there is any inherent conflict that cannot be overcome with a concern both for private property rights and our national objectives in terms of environmental quality.

Senator Stafford. Thank you very much.

The Reagan administration has organized a Government-wide regulatory relief area, which targets relief for repeal or modification. For example, Vice President Bush's task force has proposed changes in EPA regulations and policy designed to implement the Clean Air Act. Some of these regulations are specifically required by law and have been developed through an orderly administrative process. My questions, therefore, are these: Have you participated in the identification of those regulations or policies that the administration wants to change? What are your own views with respect to the regulations under review, and are you obliged to press for the regulatory changes as the EPA administrator? And finally, how do you propose to reconcile the recommendations with protection of public health and welfare mandated in statutes; I understand that is an awful mouthful.

The Chair would say that as to any of these questions you prefer to respond in writing, provided we could do that quickly, would be acceptable to me, and I will repeat any part of that question you wish me to.

Mrs. Gorsuch. I think I jotted down the elements. If I missed any, you can prompt me, and I will answer here or in writing.

The first element of your question is: Have I participated in the identification of any of those rules or regulations that relate to the EPA's activities which were proposed for a reconsideration? And the answer to that is that I was informed on a preliminary basis of what the proposals would be. I did not particpate in the identification of any of the specific regulations.

I think, however, before I go further, that I would like to clarify my understanding of the activity that is taking place today under the Vice President's task force. And that is as follows: There have been specific proposals that specific regulations be reviewed. Now as you and I both well know, the review of rules is by prescribed procedures in which certain steps must be followed, and I think it would be incorrect for anyone in this room to conclude that the review will result in a foregone conclusion. Certainly that is not my approach or understanding of what is taking place today or what is under way in terms of regulatory reform.

With reference to the second part of your question, I think that becomes even more relevant because it solicited my particular views on the suggested consideration of particular rules.

I think it would be, and I am sure you would agree, incorrect for me to prejudge any such consideration, and to do so without having to look at the record which will be educed. So that I stand before you without any preconceptions as to the specific proposals for reconsideration that have been made.

If I have jotted down correctly, I think the third part of your question was: How do I intend to reconcile the Environmental Protection Agency performance with the overall stated goal of the President for regulatory reform? I addressed that in my statement. I would like to elaborate on it.

I think there is a real initiative in this entire administration to do away with those regulations, which are unnecessary and overly burdensome. With particular reference to EPA, I would say again, without prejudging or coming before you with any preconceived conclusions, I have heard frequently the allegations made that the schematic regulatory process of EPA may be more process oriented than result oriented. I think all of us would agree that what we are looking for are environmental protection results, results that speak to the quality of our air, water, and land, and the protection of our public health. So in general terms I hope I have been responsive to your inquiry.

Senator STAFFORD. You have, indeed, and I admire your retention of multibarreled questions.

Mrs. GORSUCH. I have a good pencil here.

Senator STAFFORD. This question will be my last for the moment.

Most of the laws enacted since the creation of the Environmental Protection Agency by Executive order vest their authority in the Administrator of the Environmental Protection Agency, although the Environmental Protection Agency is an independent regulatory agency created by order, not statute. The Congress has treated it as if it were analogous to agencies like the Food and Drug Administration.

The laws reflect a reliance on the independence and interpretation of both the Environmental Protection Agency and its Administrator. There is virtually certain to be an occasion during your tenure in which the law, whether it is the Clean Air Act, the Clean Water Act, or any of the many other statutes charged to your care, will require you to make decisions. You will hold one view of the law and somebody else will hold another. That other person may be either up here or a peer in the chain of command. When that is assigned by law to the Administrator of the Environmental Protection Agency, and when your construction of the law differs from the construction of another, especially when that other person theoretically might be your senior in the chain, whose construction will you adopt, yours or the other officer's?

Mrs. GORSUCH. That is a long question and it has an easy answer, my own.

Senator STAFFORD. I am happy to hear that.

Senator DOMENICI. I predicted that for you, didn't I?

Senator STAFFORD. Yes; you did, and I might say, Mrs. Gorsuch, I am prepared to believe you. And I note with regret my time is about up, so, Senator Hart?

Senator HART. Thank you, Mr. Chairman.

Mrs. Gorsuch, in various press accounts, Mr. Weidenbaum and other officials in the administration have been quoted as saying that the administration may or will propose fairly radical changes in the clean air laws such as restricting the Federal role to merely setting air quality standards and leaving it up to the States or whomever, perhaps private interests, to determine how those standards are to be met.

Would you support any fundamental changes like this to the framework of the Clean Air Act?

Mrs. GORSUCH. Senator Hart, let me preface my remarks by saying the policy changes that will be submitted by the administration for amendments to the Clean Air Act will be those of the President of the United States. I will be an active participant in the formulation of those policies, and will gladly seek and make recommendations for his consideration. But those recommendations that are forwarded to this Congress will be Mr. Reagan's.

It seems to me that we have learned a great deal, even since the last amendment of the Clean Air Act in 1977, and that we should be, consistent with the result of the study which you conducted, prepared to rethink several of the major issues in the Clean Air Act.

I certainly will be interested in the debate, the evidence, the discussion that will come before this committee and its counterpart committees in the House in formulating my recommendations for consideration by the President.

Senator HART. Well, thank you, but let me restate the question. Will you recommend to the President fundamental changes in the clean air law?

Mrs. GORSUCH. Well, I suppose it would be difficult to characterize what is fundamental and what is fine-tuning. I think my prior answer was responsive in saying that, No. 1, I wanted to listen to the evidence and discussion and debate conducted in these chambers on those issues, and certainly, I think we need to draw upon the experience that we have learned since the last round of the enactment of legislation. I share Senator Randolph's previous position that no single piece of legislation is ever a piece of perfection, and can always be improved upon. I think that is the case in the Clean Air Act. I think there will be significant areas of improvement in our efforts for the attainment of air quality goals.

Certainly the recommendations of the commission which you chaired make similar or come to similar conclusions that there are areas for large improvement in our efforts without changing the nature of our goal.

Senator HART. Well, more specifically, the National Commission on Air Quality, having reviewed the clean air laws for over 2½ years, and as you know some weeks ago issuing its report, found the fundamental law itself was sound. I think that is the best way to summarize our conclusions. But they recommended over 100 recommendations of which perhaps 3 or 4 have to do with what some might call significant alterations, but not fundamental changes in the law. And when you say are looking forward to deliberations here, I take it that the Administration will not wait until Congress has held its hearings and begun the markup of the bill before it puts forward its own position. In fact, my original question referred to public statements made by people in the White House, Mr. Weidenbaum, particularly, that the Administration would propose fundamental reordering and restructuring of that law. This committee has had a couple of days of hearings, we had the members of the commission before us, we had your predecessors before us, and I think the overwhelming conclusion of the commission and your predecessors was that we should not alter fundamentally the clean air laws.

What I am trying to find out is, given that record and the several weeks you have been back here and had the chance to review the report, whether you agree with that basic premise.

Mrs. GORSUCH. Well, I think it is interesting because the commission that you chaired, made so many recommendations for change, some might characterize that as a change, or a fundamental change as well, and that is why I found it difficult to be responsive to your question. I think there are several areas where this Congress, and certainly the Administration, will suggest that there are better ways to meet the goals.

If I understand your question to mean is there any intent to abandon the goal, certainly not. I am in possession of a letter sent by the Vice President to the members of this committee which indicated the administration's timetable and desires, indicating that they have targeted June 30, 1981, for the development of a bill, and I would like to quote from this:

> Reauthorization should focus on the correcting of deficiencies in the current law and should reflect knowledge gained since the last Congressional review of this important law. The law we seek is the resolution of problems, significant mid-course corrections in the national effort to achieve a healthy and economically-sound environment.

Senator HART. On the question of standard setting, which as you know is one of the philosophical questions relating to this law, you are quoted in a local newspaper account in February as saying you absolutely think—and "absolutely" is in quotes—the cost-benefit analysis should be included in standards for pollution emissions. Is that your view, and would you care to expand upon it?

Mrs. GORSUCH. My view is the cost-benefit analysis should apply to the regulatory efforts of every agency where the law allows. I am aware that the Clean Air Act in requiring the setting of ambient air quality standards does not allow for the inclusion of a cost-benefit standard in the thinking of the person who is setting it. Perhaps it needs to be said, in taking the oath of office, I do so to uphold all the laws of the Nation, the Constitution, and would obviously implement that law as directed by Congress.

Senator HART. But you are not in sympathy with it?

Mrs. GORSUCH. I am in sympathy with it to this extent, Senator Hart, we obviously have a first and primary obligation to protect the health and welfare of the people of the United States. The other laws which the EPA Administrator is charged with administering such as TSCA, for instance, have the concept of unreasonable risk where the Congress saw fit to include the concept of economic expenditures as they relate to the risks involved to the health and environment. I do not know that the Clean Air Act does not include that concept for ambient standards, and would implement the law as directed by the Congress.

Senator HART. But will it be your recommendation to the President that he should propose changes in the law to accommodate cost-benefit changes in the air quality standards?

Mrs. GORSUCH. I have not come to a conclusion in that respect.

Senator HART. So the statement in the newspaper is not an accurate reflection of your views, that you absolutely think that cost-benefit analysis should apply to standards for pollution emissions?

Mrs. GORSUCH. It is not in this respect. As I recall that particular interview, the question was: Did I believe there should be cost-benefit analysis in the development of regulations? I said definitely, absolutely, I do think so.

Senator HART. In the establishment of regulations. I don't want to quibble.

Mrs. GORSUCH. I have seen the article and it makes a specific——

Senator HART. But that is not in quotations, and there is a difference between regulations and standards.

Mrs. GORSUCH. Exactly.

Senator HART. And one of the key issues will be whether this Administration, presumably with your participation, will make a recommendation to this Congress to fundamentally change the position the Congress and the Government have taken for the last decade, that air quality standards not be based on cost-benefit analyses. So it is an important distinction to me at least, and to others on the committee, as to what your position is here?

Mrs. GORSUCH. As I have indicated to you, my personal position is not finalized there. I am certain that the President and the Administration will be sending that recommendation to this body in due course as they have indicated.

Senator HART. But based on the recommendation of people in key positions such as yours. I understand it will be the President's decision, but you will be participating in that decision and it is important to us to know what your position is and what you will recommend to him.

Mrs. GORSUCH. As soon as I formulate that position, I will be happy to communicate it to you directly, as well as any rationale for its foundation.

Senator HART. But you have not, at the present time?

Mrs. GORSUCH. Not at this time.

Senator HART. Thank you.

Senator STAFFORD. Thank you.

Might I just interpose before we go to the next Senator, I think the sooner that the Administration can transmit its policy positions to us, the better off we will all be, Mrs. Gorsuch, and a delay into late June or July will make it very difficult for us to try to write the Clean Air Act this year, so we realize the problem, but the sooner the better for all concerned in this respect.

Senator Chafee?

Senator CHAFEE. Thank you, Mr. Chairman.

Mrs. Gorsuch, could you describe for us the administration's Task Force on Environment and National Resources chaired by Secretary Watt? Who is making policies in that? Is it by a vote or how will things work out? In particular, I am interested in it as it affects matters such as the Clean Air Act and the questions that Senator Hart was asking you?

Mrs. GORSUCH. Well, the President has seen fit to run his government by way of Cabinet Councils, one of which is on National Resources and Environment, chaired by Secretary Watt of the Interior Department. And there are work groups under that structure of Cabinet Councils, one of which will be and is a work group specifically concerning itself with the policy recommendations which will be formulated for the Clean Air Act. There are various designates or delegates to that work group, including the Department of Transportation, obviously the Environmental Protection Agency, and the Department of Commerce, as are representatives from the Council of Economic Advisers.

In terms of how decisions will actually be made, I am sure they will be made much as we make decisions in this forum or in any other. Based on the best possible information that can be educed from the various affected departments, and after much discussion and debate.

Senator CHAFEE. Mrs. Gorsuch, what causes me concern is that you recognize your role as an advocate for the environment. In your testimony, you indicate the reasons you were selected is not because you were pro or con on the environment, I think you said:

> I have not made my living fighting for or against environmental laws and regulations. I am convinced that he has asked me to serve because he believes that my education and experience have trained me to take the broad overview necessary; that my record in the Colorado State Legislature indicated a strong commitment to hearing all points of view and forging workable compromises.

But could you elaborate a bit on that? Obviously my concern is that you not be merely a compromiser or one forging a compromise after hearing evidence, but that you be a sopkesman, you are head of the Environmental Protection Agency. Could you help me on that, please?

Mrs. GORSUCH. I would try to be a spokesperson.

Senator CHAFEE. I will accept that.

Mrs. GORSUCH. That is just a little aside.

Senator CHAFEE. I won't quarrel on that point.

Mrs. GORSUCH. I am sorry if you misinterpreted the thrust of what I tried to convey in my statement, that I have not previously made my living either advocating or fighting the Environmental Protection Agency. But obviously having a deep-seated and longgoing concern for the environmental ills of the Nation, I actively sought the position. I understand in that position I will be called upon to be an advocate of the policies that are implemented by the Agency, and in light of my background of advocacy of other causes, I don't believe that there would be any real concerns, Senator, for my ability or my dedication to be an advocate of the Agency I am called upon to administer.

Senator CHAFEE. But in these task forces such as the one the President has set up, obviously the strong voices for cost-effectiveness are going to come from, say, the Secretary of Transportation, or the Secretary of Commerce, worrying about the steel industry. But I look to you in this position as the spokesperson for the environment, for the Clean Air Act, that the thrust of those acts be ably represented in those councils. Do you feel in undertaking this task as Administrator, that that will be your goal?

Mrs. GORSUCH. Certainly.

Senator CHAFEE. I will accept that as an unequivocal answer.

Senator STAFFORD. It would have done credit to even Calvin Coolidge.

Senator CHAFEE. Mrs. Gorsuch, I would be interested in hearing your thoughts on section 404 of the Clean Water Act, which I think you and I had a chance to discuss when you were kind enough to drop by and visit with me. That is an act of some concern to me, I would be interested to hear your thoughts on it.

Mrs. GORSUCH. Well, currently the 404 activities are conducted by the Corps of Engineers through the process of issuing permits for dredging for materials that are deposited in our navigable waterways, and the corps administers this responsibility for standards which the Environmental Protection Agency has developed as being necessary for protection of the navigable waters and adjacent wetlands.

The Environmental Protection Agency additionally has the authority to veto the permits granted by the Corps of Engineers. And the Congress has seen fit recently to allow the States to have been power to issue permits for that activity. It is my understanding, Senator, that few, if any, States have seen fit to undertake the responsibilities of primacy under section 404, and I know that that is a particular concern to you, as it is to me. I think we are best served in our environmental goals when the States are full partners, rather than have the Federal Government solely responsible for the entire undertaking.

Certainly we might both be well advised to examine the current elements of the 404 program which would seem, or maybe they are tending, to make it an unattractive program for the States to assume.

I know you have a concern to see it fully implemented and if there is some good reason in the current program, that make the States find it unattractive, it might be worth our while to identify them.

Senator CHAFEE. What level of importance do you place on the protection of wetlands?

Mrs. GORSUCH. Well, Senator, I think wetlands have proven to be a very integral part of the ecosystem, as a first step in the food chain process, which affects all of us in terms of our human existence.

Senator CHAFEE. Perhaps you are aware that the previous Attorney General, Mr. Civiletti, gave an opinion that EPA has the authority to determine the extent of the waters of the United States that are subject to 404.

Can we have your assurance as chief environmental spokesperson, that your agency will continue to support this finding? There is some suggestion that some other agencies should have the determination of what are the waters that fall within section 404.

Mrs. **Gorsuch**. Senator, you have my repeated assurance to abide by the laws of this body and all related regulations and Executive orders and interpretations by the Attorney General which are currently on the books. This is on oath I would take when I undertake the office and it is a responsibility I fully understand in seeking the appointment.

I know there has been a lot of controversy about the definition, and I know there are diverse views we listen to on both sides, but in terms of would I accept the responsibility given me, again I give you my repeated assurance.

Senator **Chafee**. Going beyond the confines of the law, what is your attitude toward this? Obviously the Corps of Engineers is anxious to have this authority to determine which waters are subject to 404. Do you believe that should remain within EPA as it currently does, but that is merely by an advisory opinion, and I suppose a new Attorney General might come down with a different opinion. Do you believe it should remain with your Agency or the Agency you are about to take charge of, or should it be under the corps?

Mrs. **Gorsuch**. Senator, let me say that I find it less relevant who makes the decision as I do what the decision is. Certainly if the responsibility is mine as the Administrator, I would find no difficulty in exercising the decision that is necessary.

Senator **Chafee**. I think it is very relevant, Mrs. Gorsuch, because if certain waters are exempt from the act, then that makes a tremendous difference.

Mrs. **Gorsuch**. I agree with you. We are getting to what the decision is, not who makes it.

Senator **Chafee**. I have always felt that EPA is a more sympathetic body to determine which waters are protected, and I have not looked on the Corps of Engineers as an organization that is inherently sympathetic toward the waters. Is that a view you agree with or disagree with?

Mrs. **Gorsuch**. I don't have the same factual basis for coming to those same conclusions, Senator. I think we are probably both saying the same thing. My concern is not so much with who makes the decisions, so long as it is in conformity with the policy objectives you are seeking. I would say further I think it is important that whatever decisions are made they should be premised on facts to the extent possible, and policy considerations that this Congress directs. I don't mean to belittle your concern, certainly I am perfectly willing and able to continue that jurisdiction in the Agency, according to the advisory opinion that you have stated.

I am sure that would pose no difficulty in terms of the overall administration position that I am looking for.

Senator **Chafee**. Well, the trouble is that the law is silent on this particular point, and somebody has to make the decision and it has been EPA, which I would hope you would strive to preserve in the future.

Mrs. **Gorsuch**. I appreciate your making that comment and I will certainly benefit from your wisdom in this regard.

Senator **Chafee**. There is another point, in your testimony you mention that:

> **We must focus our thinking on positive approaches that provide the flexibility to encourage innovative alternatives that can achieve the desired results in an equally or more efficient manner.**

I agree with that. Now one of the problems that seems to run counter to that is the administration taking the innovative and alternative funds under the Clean Water Act and passing them to the States under the discretionary fund rather than have it what you might call a categorical grant to the States for innovative technology as far as the waste water treatment goes.

Could you give me your thoughts on that?

Mrs. GORSUCH. The approach the administration has taken is consistent with its concept of the new Federal legislation which is to leave those choices and options available to the State to make. Certainly there is no less emphasis, nor is it my interpretation, of any lessening of the emphasis on the necessity for innovative or alternative technology. It is merely a desire to allow greater latitude to be made by the decisionmakers at the State level, to set aside certain sums of money received from the Federal Government, in their own discretion, rather than as commanded by the Federal Government.

Senator CHAFEE. The problem, as I see it, is that this is a very, very extensive program, as you know, and in my next round of questioning, I want to talk to you about the funding of this program as you see it. But one of the disappointing aspects of the wastewater treatment grants is the lack of innovative technology that has been developed. The carrot has been out there, but not used correctly. I think that brings great opportunities for this Government. But in the change that is suggested by the administration, I think the opportunities or at least the incentive for the alternative will decline.

Do you see it that way, and if not, explain why, what incentive is there for the States now, as proposed by the adminstration?

Mrs. GORSUCH. Well, it would seem to me, Senator, if we are talking the same language, the current law requires a certain percentage of the Federal moneys received to be set aside by the States for specific purposes.

Senator CHAFEE. Right.

Mrs. GORSUCH. And you concluded from your experience that that single purpose could not reasonably be achieved in the past. The current proposal allows the State to put all of its money in I. & A., or none of its money in I. & A.; the point being the changes no longer require a sum to be set aside out of funds.

I think that in this Nation of ours of 50 different States with 50 different requirements there can be a rational argument made that innovative and alternative technologies may be particularly useful in certain jurisdictions and of lesser benefit to others. I think, if my recollection is correct, that that is, in fact, the history of expenditures of those funds, that some States have used them and others have not, and I would stand corrected if your recollection is different. But I don't think the removal of the mandatory set-aside should be interpreted as a lessening of emphasis of encouraging innovative and alternative technologies.

Senator CHAFEE. Our time is up and we can discuss it in the next round. Thank you.

Senator **Stafford**. So that everybody will have in mind what the Chair would like to do here is to give Senator Domenici 10 minutes at this point and then recess the meeting until 2 o'clock, so that those few in the audience who feel they need to eat may do so.

Senator Domenici, you are recognized.

Senator **Domenici**. Mrs. Gorsuch, let me ask you, do you see a difference in your role as Environmental Protection Agency Administrator, or generally in the role which you occupy when you are involved in formal hearings from whence official decisions come based upon the official hearing record?

Mrs. **Gorsuch**. Certainly I do, Senator.

Senator **Domenici**. Tell us what the differences are as you see them?

Mrs. **Gorsuch**. As I see them they relate to consultation with other members of the executive branch and beyond that. The role of the Administrator is strictly prescribed by law in terms of rulemaking and the procedures that should be followed. In other respects the role of the Administrator is to serve as the chief of an executive agency in the executive branch of Government, and the consultation avenues are open.

Senator **Domenici**. In that regard, I take it that your general commitment to this committee and when you take the oath that you understand that there is a difference, and when you are in official hearings you will govern your conduct by the rules of this country and the Administrative Practices Act and other rules and not in a manner of casual consultation with others, or accepting recommendations from whether it be special interest groups, the President, or anyone else, you see a difference. You will abide by the precedent that is established, will you not?

Mrs. **Gorsuch**. Certainly, and additionally there are court decisions which speak to this.

Senator **Domenici**. I want to talk about a problem I see in the Agency and share it with you and see if you can understand the problem and maybe offer some of your ideas.

I have worked on this committee not as long as some, but for 8 years, now. I was part of both acts, including the 1977 Reform Act. It seems to me that the Administrator goes his or her merry way, trying to enforce the law, and doesn't share the problems, the dimension of the problems, that they are confronting with Members of Congress, until we get right down to doom's day. For example, United States Steel is about to close down, or out in the field EPA finds it almost impossible to enforce something we told you to enforce.

Do you have any problems with sharing those concerns with the chairman of the appropriate committee or the members of this committee if you run into those kinds of problems as you move down the path during the next 4 years?

Mrs. **Gorsuch**. Absolutely not, and I understand the type of frustration that you are describing having sat on the other side of the dais myself, where you think you have a pretty good program going until it comes time to do the budget over again or there is a crisis out there and you hear about it for the first time.

I think it is very important for the EPA through its Administrator or an Assistant Administrator to stay in communication with the committees of Congress. These are not problems we can work on in isolation and without good communication.

Senator DOMENICI. Let me talk to you about so-called cost-benefit analysis and whether it has a role or not in the environmental laws of this land. You are familiar, are you not, with the difference between primary health standards under the Clean Air Act and other standards?

Mrs. GORSUCH. Yes.

Senator DOMENICI. Primary health standards, if the statistical base upon which the standards are set is correct, then deal with health.

Secondary standards do not necessarily deal with health.

If I understand from your statement, you have implied that maybe we ought to look at the process of standard setting as part of our reform effort.

But assume that that process is working correctly, do you not see a difference in terms of whether you should apply cost-benefit analysis to primary standards as opposed to other standards in an environmental law?

Mr. GORSUCH. Yes; there are vast differences, and one is more relevant.

Senator DOMENICI. So that if you are really dealing with a primary health standard, it is obviously very difficult to inject cost/benefit into that if the standard is correct and if the purpose of that law is correct, is that not correct?

Mrs. GORSUCH. Well, Senator, let me see if I understand your question.

Senator DOMENICI. Let me be very blunt. If you have a primary health standard established by the Congress of the United States, presumably it is correct, once we set the standard. Would it not be difficult to then try to apply cost-benefit analysis?

Mrs. GORSUCH. To the standard, absolutely, yes.

Senator DOMENICI. And you would not advocate that, would you?

Mrs. GORSUCH. No.

Senator DOMENICI. Now, with reference to the PSD program are you familiar with it?

Mrs. GORSUCH. Yes, sir, I am.

Senator DOMENICI. I think the Air Quality Commission indicates it was not working well; that it is fettered with some bureaucracy we did not intend.

Do you intend to make some recommendations so that we will have a more workable PSD program?

Mrs. GORSUCH. Certainly that would be the undertaking of the administration's recommendations to this Congress, yes. It is my understanding from the committee's report that they also concluded there were real problems with the present PSD program, as has the agency in their independent look at that program.

So that I think that is one area where all of us will have to concentrate our efforts to see what improvments can be made.

Senator DOMENICI. Now, let me jump over to the water and sewer grant program with you for a moment.

I don't think there is any doubt that the administration is correct that that program has gone haywire in terms of the original goals. It was originally an abatement program. We were supposed to be cleaning up water with that program. It turns out that instead, it is predicated on a broad needs test that changes every year, and we are building water and sewer collectors for cities and counties.

However, certain court orders are presently entered against many cities, counties, and other local units of government ordering them to make improvements. They are waiting for this water and sewer grant fund to be able to do their job. You are aware of that, are you not?

Mrs. GORSUCH. In a general sense I am, yes, Senator.

Senator DOMENICI. I would personally ask you to take a look at this issue and try to formulate an administration recommendation for a new program that takes into consideration that there are cities and counties out there under court order who are waiting for the funds to comply with the court order or will be forced to close down their public works facilities. I don't know the whole problem, but it seems some priority should be given in that area or we are inviting exactly what you don't want to invite. We all want harmony, but will get the opposite if we do not address issues such as this one. So I think you ought to consider some prioritizing there in you legislation.

My last question is, Is the administration going to send a clean air recommendation to the Congress or not?

Mrs. GORSUCH. Senator, I am making reference to a letter which was addressed to each member of this committee, signed by Vice President Bush, dated April 29, indicating that indeed they would be sending administration recommendations to this committee, asking your indulgence in terms of holding generic hearings to identify the different issues and the different positions on the various issues, but also indicating that that would be forwarded by June 30.

Senator DOMENICI. You are not the only one who has input to this decision, but personally at this point in time, do you or do you not feel that the administration should send us their recommendations for our consideration?

Mrs. GORSUCH. Absolutely, I do feel that they will be forthcoming and they will send them to you for your consideration.

Senator DOMENICI. Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Domenici.

At this point, Mrs. Gorsuch, it will be necessary to ask you to come back at 2, because there are further questions, and the committee will be in recess until 2 o'clock.

[Thereupon, at 1:15 p.m. the subcommittee was recessed to reconvene at 2 p.m., the same day.]

AFTER RECESS

Senator STAFFORD. The Committee on Environment and Public Works will please come to order.

We hope you all had a good, if hurried, lunch, and we will go directly back to questions.

The Chair notes that Senator Steve Symms is here. Did you have an opening statement you wanted to make, Steve?

OPENING STATEMENT OF HON. STEVE SYMMS, U.S. SENATOR FROM THE STATE OF IDAHO

Senator SYMMS. Mr. Chairman, I thank you very much. I was tied up, as the chairman knows, in the inheritance-tax hearings we are holding to rid this country of another burden of death taxes, but I am glad to be able to participate in this hearing. I look forward to an opportunity to ask Mrs. Gorsuch some questions, and I welcome having her here as I fully believe she will do a job at EPA that I think is long overdue. From what I know of her talents, she certainly has the capability to be very successful in administering this very important agency.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you very much, Senator.

Mrs. Gorsuch, although much of EPA's budget supports a national public works construction program to treat municipal waste water, EPA operates a comprehensive program to regulate environmental pollution. A policy of budget restraint can therefore serve as an effective tool in avoiding regulatory responsibility.

Are you free to establish or will you be free to establish your own priorities based on statutory requirements in achieving a given degree of budget restraint, or will you feel obliged to curtail particular regulatory activities the Reagan administration dislikes under the guise of general fiscal policy?

Mrs. GORSUCH. Mr. Chairman, any administrative policy I intend to do will be done directly, rather than under the guise of any action, whether it is budgetary or otherwise.

I am not familiar with, nor do I believe there exists, administrative activities that have been identified by the President as it relates to an EPA program which is specifically reprehensible. The administration is committed, and I share that commitment, to a comprehensive overview to reduce the regulatory burden, especially in terms of the processes as opposed to the results. And that is a commitment that I will follow, regardless of budgetary considerations.

Senator STAFFORD. Thank you.

To what extent do you think environmental regulation, if you do, is responsible for this country's recent economic problems of high inflation and low productivity?

Mrs. GORSUCH. I think there is a contributory part in the effect unnecessary regulations have in our overall inflationary problems. I do not think it is the singular or only impact on the national dilemma we find ourselves in, in terms of inflation and low productivity. But certainly it bears its own role.

Senator STAFFORD. The Mountain States Legal Foundation, on behalf of a number of members of the Colorado State Legislature, filed suit to contest the right of the Environmental Protection Agency to impose sanctions against the State on violations of the Clean Air Act.

I am told you were not named a plaintiff in that lawsuit. Did you consider whether to join as a plaintiff in the lawsuit? If you declined to join your legislative colleagues, what were the reasons for the decision? If sanctions such as mandatory inspection and maintenance programs, Federal grant cutoffs and the like are inappropriate ways to endorse Federal laws, can you suggest any alternatives?

Mrs. GORSUCH. Senator, the suit was brought by Mountain States Legal Foundation, on behalf of several individually named legislators, as you noted, in the late part of 1979.

It was brought in response to sanctions then being imposed. As you know, the Federal law allows for sanctions and the opportunity to contest them within a certain period of time.

The legislature was out of session at the time and our Governor was undecided as to whether he wanted to approach protest of these sanctions through the Attorney General. So the response was left to individual legislators in their own name. I just happened to be in the Yucatan at the time and was not consulted in terms of whether I would be a party or not.

I will note my role following that particular action, which was to sponsor inspection and maintenance legislation that passed. Following its passage, of course, the sanctions were removed. I was grateful not to have been a party to that suit. It gave me a better opportunity to stand apart and bring the divergent interests together in seeking a true solution to the problem.

Senator STAFFORD. Let me rephrase the last part of what I recognize was a multibarreled question.

If sanctions such as mandatory inspection and maintenance programs, Federal grant cutoffs and the like are inappropriate ways to enforce Federal laws, can you suggest any alternatives?

Mrs. GORSUCH. I will preface my remarks by saying those are the sanctions prescribed by statute and called for by this Congress if certain deadlines and timetables are not met in the nonattainment areas.

As an implementor of those statutes, I will take the oath to apply them as all the laws and the Constitution upon assuming the office.

It has been my experience, however, that in overall lawmaking, we generally can assume a greater degree of cooperation when incentives are offered rather than when sanctions are imposed and this applies across the board in my experience.

If we agree that cooperation with the States and localities is essential to the attainment of our national environmental goals, if that is the first premise of our operation, it would seem to me that seeking that cooperation could be more effectively pursued through a system of incentives, rather than through a system of punishment.

I know from my own particular experience that the decisionmaking which went on in the general assembly in 1980, following the imposition of sactions, did not take place in the unimpassioned atmosphere I think makes the best policy.

There are many among my colleagues—I should not say "many"—there were some of my colleagues that I think I can properly identify as being blind to the real implication of the law. They are blinded simply out of a well-founded resentment of the heavyhandedness of the Federal Government, to paraphrase not my words, but their own. They felt their decisionmaking in that atmosphere was severely impaired. I think it is the wrong atmosphere for the attainment of the goals we have in mind.

Senator **Stafford**. Thank you, Mrs. Gorsuch.

Senator Hart?

Senator **Hart**. Mrs. Gorsuch, I would like to pursue Senator Stafford's line of questioning.

In response to a question that I had asked this morning, as well as Senator Stafford's question, you have taken the position of referee. That is to say, if this is what the Congress wants, this is what I will do.

What we are really trying to find out is what your position is. We understand you are not going to break the law. We are trying to understand what your substantive philosophy is as a participant in policymaking inside the Administration.

My point is, you are not going to be isolated, I would think, from deliberations in the Administration on what its policies should be on a number of issues, and we are trying to find out what your own beliefs are and what role you will take in formulating that policy.

Congress clearly does not legislate in a vacuum. The principal force in legislation comes from the executive branch. It does not always prevail but is an important consideration of what the President wants. We are trying to find out what you will advise the President to do and what effect that might have on the policy we adopt.

Do you believe that if incentives are used and do not succeed, States do not act, that Federal sanctions under some legitimate circumstances should be applied?

Mrs. **Gorsuch**. That is a real hypothetical, Senator.

Senator **Hart**. No, it actually happened in Colorado. The incentive was the State shall determine its own State impelmentation plan, including inspection and maintenance program.

I have no brief for the EPA in its conduct of that affair, but the incentive offered was the Federal Government won't tell you what to do, you decide what to do, but if you don't come up with a plan by a certain date, and that date, as you well know, was waived at least once if not twice to give the Legislature more time, then we have no choice but to do what the Congress tells us to do, and that is to impose sanctions. So that was not a hypothetical, and I am trying to find out, under circumstances such as that, where all the incentives that are in the law now or should be put into the law to get a State to do something, do not work, then is it legitimate for the Congress and for the EPA to impose sanctions?

Mrs. **Gorsuch**. First of all, I would be happy to share with you my views on policies that I will be pursuing, to the extent I have formulated final conclusions, but in many areas I have not. I have been a private citizen notwithstanding the nomination in late February, and I have specifically tried to avoid assuming the duties and responsibilities as the Administrator or giving the appearance of doing so. So, I have not participated as fully as I would like to in the deliberations and discussions that I feel are essential before formulating my final conclusions in terms of what recommendations I will be making in the forum of the policymaking considerations that will eventually result in the President's proposing of amendments if at all to the Clean Air Act.

I think I said, in responding to Senator Stafford's question, it has generally been my experience that if you are seeking true cooperation—and I think that is an essential ingredient in terms of the national effort for environmental goals—that incentives as opposed to sanctions are a far more effective tool in eliciting that cooperation.

Let me address myself, if you will let me finish, to the specific considerations in Colorado.

In 1979, the General Assembly did pass an inspection and maintenance program. Its components resulted from a study of which proposal would be the more effective program. One of those studied was the EPA proposal. The other proposal was a tuneup program. The legislation provided that: given our different atmospheric conditions, which program would work best? The information that was available to us was not comprehensive and many members thought we needed further study to make a determination between those two issues.

I did not vote for that bill, I voted against it because I felt there was sufficient information to act and given our problem, we needed to act promptly.

However, most members of the General Assembly, the majority, acted in good faith and passed that bill. They did so on the assurance of EPA that it was an adequate response by the State to the Federal requirement for inspection and maintenance for a nonattainment area. That assurance was given before the final vote was taken. It was later reversed when the General Assembly was out of session and the sanctions were imposed.

If you are asking me whether or not I think that was a proper activity on behalf of a Federal agency and whether sanctions imposed under those circumstances achieved any real good purpose, I would have to conclude no. I think they do a good deal of harm. The incentive you described was the incentive for the State to do its own program. Its program was further study, so that the best possible scientific bases could be the premises for policy decision. They exercised that incentive and nonetheless had sanctions imposed.

I certainly don't favor that.

Senator **Hart**. Let me restate the question.

Leave the Colorado experience out of it. I understand your view is that incentives are more effective, that is a legitimate point. I am hypothesizing a situation where a State government does not act adequately. Leave the specifics of the Colorado situation out. You have incentives, you have the Federal desire for States to control their own affairs and determine their own plans. Obviously those plans must do something or they are not worth anything. Phony plans won't solve the problem. The incentives are offered, they are not responded to adequately. Is it then a legitimate position for the Federal Government to impose sanctions?

Mrs. **Gorsuch**. That is within the legislation to do and if that is the will of Congress, certainly that is what I would pursue.

Do I think it is the best way to go about business? No.

Senator **Hart**. So you are opposed to sanctions under circumstances where the incentive approach does not work?

Mrs. **Gorsuch**. Senator, as I stated in the beginning, I said that is a hypothetical question, and you say no it is not. The incentive that was offered there, as I indicated, the State responded to and had the assurance at the time that they had responded properly. You would have to give me a concrete question before I could come around to any conclusion. I do not believe that the imposition of sanctions is the best possible way to achieve national goals.

Senator HART. Nor do I, and that is not the question, and I apologize for pursuing this, but it is a very, very important issue of the same sort as the issue we got into this morning about cost-benefit ratios. It is a fundamental policy question.

When the law was devised, it was determined that the Federal Government would not impose plans on States, and it certainly would not tell States how to clean up the air. The incentive, if you will, in this federalism, which I think also could be called creative federalism, or whatever, was that the Federal Government will set the standards, set deadlines, and the State will determine how best within those deadlines to comply. But obviously they have to do something, not just something on paper that has no effect.

In the deliberations in 1970 and again in 1975, 1976, and 1977, the question had to be asked, what do we do if the States don't act, what recourse does the Federal Government have? It had several. It could impose a Federal plan on the State of Colorado, city of Denver, or it could say in response to your not coming up with an adequate program, we will withhold Federal funds for programs that contribute to the problem, such as more highways, more developmental investments that expand the population and contribute to air pollution, where there seems to be a nexus between the sanctions and the problem.

Now, if you as the principal Federal official in this area do not believe that is the proper Federal response under those circumstances, it is important to us in Congress to know what you think we ought to do if incentives fail.

I understand they are more effective and preferable, we like them more, but this is a real world here and they don't always work, and I am trying to find out if incentives to States fail and sanctions are not the proper response, then what is?

Mrs. GORSUCH. And that, Senator, I will give a great deal of thought to before we formulate the administration's proposals for the Congress to consider.

Senator HART. Well, Mr. chairman, I must say, Senator Domenici and others supporting Mrs. Gorsuch made a big point about her concrete views and willingness to take positions and that is what I am trying to get her to do here, both on the sanction question and on some of the others, and it would be helpful to me to know more concretely what those views are.

Senator STAFFORD. Thank you.

Senator Chafee?

Senator CHAFEE. Mrs. Gorsuch, do you believe there should be funding for the wastewater treatment facility in the 1982 budget?

Mrs. GORSUCH. Senator, I do, and I believe that the Administration is committed to funding those wastewater treatment facilities in the 1982 budget following certain reforms in the current law.

Senator CHAFEE. Provided those so-called reforms are met, do you support the funding?

Mrs. GORSUCH. Yes, Senator, I do.

Senator CHAFEE. Are you familiar with the level of the funding?

Mrs. Gorsuch. No; I do not know that any firm figure was proposed.

Senator Chafee. the figure of $2.4 billion has been used consistently, are you familiar with that?

Mrs. Gorsuch. I have heard it used, I don't know if that is the firm figure.

Senator Chafee. Pursuing the Clean Water Act questions, the 1977 amendments provided that the criteria for 129 pollutants had to be set, and this requires an incredible amount of research in order to determine what those criteria are.

What are your views as far as the research end of the budget for EPA? That is a section that frequently comes under attack, but could you give me your thoughts on that part of the budget?

Mrs. Gorsuch. If you will allow me just a moment to get it in front of me.

Senator Chafee. Surely.

You don't have to give me specific figures, but more than a question, it is voicing a concern that if we are going to set forth these criteria, it will require substantial funding in the research end, and I just want to make you aware of that, and I am sure you will be made aware of it as you proceed. It is popular nowadays in many areas, as budgets are cut, to cut out research, figuring that that is an unnoticeable thing, it does not affect the agency. Yet with this agency it would have not only long-range effects, but short-range effects of some consequences.

Getting back to the line of questioning that Senator Hart was pursuing, what are your views on retention of the deadlines under the State compliance deadlines under the Clean Air Act?

Mrs. Gorsuch. Senator, I would have to respond as I did to Senator Hart. I think those are obviously issues that we are going to all have to be aware of in our reconsideration of the Clean Air Act and whether as written it is consistent with the goals and provides a process and mechanism for obtaining those goals.

I know that the commission that Senator Hart chaired has come up with their recommendation, and that may well be the remedy which will eventually emerge.

At this point, however, I cannot give you any firm commitment on my part as to what I think it should be. I know that we need to keep before us the goals of quality and our environment, and public health problem, and deadlines of the legislation that provide incentives. I think we need to reexamine whether those deadlines are realistic in terms of the processes that have been made and can be made, and I know this body in its deliberations will do that as the administration is formulating its approach.

Senator Chafee. I notice that Vice President Bush indicates that some things are going to be up here on the 30th of June, but meanwhile, we will be working on this, and I must say, I would hope the administration could get its legislation up here before the 30th of June.

Mrs. Gorsuch. May I note two contradictory forces here?

Senator Chafee. Sure.

Mrs. Gorsuch. One is a strong desire by this committee, in which I concur, that the Administrator be a primary person of formulation of that policy. And two, there is the conflicting problem that there is no Administrator in position.

So I think we are all anxious to formulate the proposals and submit them to this body as you are to get on with conducting the hearings and your own deliberations which we will be interested in. But we have got a time squeeze problem here.

Senator CHAFEE. There is no quesion here, in this committee, that between those two they are more anxious that you be the principal spokesperson for the policy of the country.

Mrs. GORSUCH. As I indicated, I am ready and willing with your advice and consent.

Senator CHAFEE. Now, going back to your statement where you more or less summarize your point on the importance of the States:

> My experience has given me greater faith in the ability of the States to function as true partners, and I believe that far better environmental protection can be achieved if we will allow the level of government closest to the point of control enough flexibility to implement the protection program best suited to the area and the people who must live in it.

Well, now, that is all right to a point. The trouble is that air does not stay in one area, and the people who are finding the air best suited to themselves in that area, if they are in a section where there is as strong wind blowing from the West taking it to the East constantly refreshing their air, they might find the protection area suitable to themselves.

But for those of us in the East who are the repository for much of that, we are not so enthusiastic about this approach.

Could you amplify a little bit on your thoughts on that paragraph, that clause?

Mrs. GORSUCH. I think you are applying it specifically to the Clean Air Act and so I will in my response, but I don't limit it there.

Senator CHAFEE. Well, water flows through States, too, but let's talk as to the Clean Air Act.

Mrs. GORSUCH. I understand your concern and that is why the approach taken by Congress in the past is that national standards indeed make a good deal of sense.

What my remarks are intended to convey was a strong emphasis on the structure of the current law which allows SIP's to be developed at the State level for their consideration of what works best in that particular area, and that was the point of my remarks.

Senator CHAFEE. But you believe in the national standard,

Mrs. GORSUCH. Yes, I do. Senator.

Senator DOMENICI. When you are speaking of the West you didn't mean your State, you meant Ohio.

Senator CHAFEE. No, I included the Four Corners, I went further West.

Senator DOMENICI. You think that goes all the way to Rhode Island?

Senator CHAFEE. You're darned right.

Now that Senator Domenici is here, I want to get back to a question he raised which I was not sure of the answer. To tell the truth, I was not entirely sure of the question.

Let me see if I can reconstruct it.

It seemed to be the suggestion that those areas where there were Federal court orders dealing with a wastewater treatment plant not being in compliance and ordering it in compliance, as I understand the Senator's question, it was that there must be some priority in assigning funds to those cities that are under those orders. Am I correct in that?

Senator DOMENICI. Assuming the orders will remain in effect.

Senator CHAFEE. And your answer was yes, which was a good answer, because that is the answer he was looking for.

Mrs. GORSUCH. Senator, it was not the answer. Senator Domenici was bringing the problem to my attention and said I should be aware of it, and I acknowledged his suggestion.

Senator STAFFORD. I hope both the question and the answer can be quick, because your time has expired.

Senator CHAFEE. I will come back to that on my next turn.

Senator STAFFORD. Senator Symms?

Senator SYMMS. Thank you, Mr. Chairman.

Last year Congress passed the Superfund legislation, as you know, and charged EPA with implementing it. Their charge is to identify and clean up hazardous waste sites around the country which are of great concern to the public and apparently to the Reagan administration as evidenced by the proportionally higher funding that has been provided in that area in relation to other EPA programs.

But I have heard rumors flying around this town, suggestions that the Army Corps of Engineers might be given the responsibility for managing the superfund program.

I would like to ask, first of all, have you heard that rumor?

Mrs. GORSUCH. That is a brand new one on me. I have heard as many as anybody else, though.

Senator SYMMS. Would turning the program over to the Corps instead of the private sector be consistent with the President's stated goals of achieving and utilizing the resources and capability of the private industry instead of adding to or keeping a duplicative work force?

Mrs. GORSUCH. Senator, that is something I will have to think about in terms of the implementation plans that are under way for that program.

I will tell you where I first heard that suggestion—well, not first, but there was an article by the junior Senator from Hawaii that suggested that the Corps might be an inappropriate governmental mechanism.

And to be more directly responsive to you, I think we will need to take a good, careful look at an appropriate Government function in implementing Superfund and what is an appropriate private sector mechanism in approaching the implementation of Superfund.

As you know Senator, where a responsive party can be found to conduct the cleanup effort, the onus is on that responsible party. I think we will have to maintain some flexibility here in determining options available to the party responsible.

Senator SYMMS. So do you think, then, there are discussions going on at EPA to turn that over to the Corps?

Mrs. GORSUCH. I frankly don't know what the discussions at EPA are, I have not been at the Agency.

Senator **Symms**. Do you think you would advocate such a policy or are you not prepared to recommend what you would advocate?

Mrs. **Gorsuch**. I am not prepared to recommend what I would advocate, but I think your question is good in terms of evaluating what functions are properly private sector and which are governmental, and the related roles depending upon who has responsibility for cleanup.

Senator **Symms**. I want to also address—Mr. Chairman, the Safe Drinking Water Act, which has been criticized by many people for its excessive provisions. Last year I joined over 75 of my former colleagues in the House in sponsoring H.R. 4909, a bill which addressed a crucial area of the Safe Drinking Water Act. This bill had a great deal of support here in Washington, and was supported by many groups. But I want to get at some of the fundamental issues in the legislation which addressed some of the problems of the Safe Drinking Water Act.

Rules are now promulgated under the act when, in the judgment of the Administrator, he contemplates a substance may have an adverse effect on people. This has been criticized because such a determination by the administration is impossible to rebut since the word "may" is a judgement call rather than a decision based on fact.

I believe that the standard led to overregulation and a misallocation of resources. So the question is, do you agree that the "may" standard is a problem, the use of that word, and if so, what would you do to solve it?

Mrs. **Gorsuch**. Well, Senator, anytime you give that broad grant of discretionary authority to the decisionmaking of any person, I think that Congress undertakes a risk where that authority may be abused.

Senator **Symms**. So you are saying yes, it is a problem?

Mrs. **Gorsuch**. It certainly could be a problem area. Whether or not it has been in the past, I think you will probably hear arguments on both sides. It is certainly within the discretion of Congress to limit the discretion in the administrative branch by prescribing stricter parameters there.

Senator **Symms**. So what you are saying, then, is that you would try to examine the standard and make more appropriate standards that are more specific; am I hearing you right?

Mrs. **Gorsuch**. I would exercise the discretion granted by Congress from the language you have just quoted with the best possible independent judgment that I could bring to bear on the issue.

Senator **Symms**. What if Congress enacted language that was a little less broad. Do you think you might favor language that would be less specific, in terms of using the word "may"—I am not an attorney, but something like "without reasonable doubt this is damaging."

Mrs. **Gorsuch**. Well, let me state just a general philosophy in terms of my past history: I have always found that to the extent that Congress as the policymaking branch, more specifically legislates, the better served is the public generally.

Senator **Symms**. Thank you very much.

Thank you, Mr. Chairman.

Senator **Stafford**. Thank you, Senator Symms.

The Chair would remind his colleagues that we have reserved the right for questions in writing to Mrs. Gorsuch. We would request members who are present and members who have staff present that to be fair to Mrs. Gorsuch, the questions be in by 5 this afternoon in order to give her an opportunity to get them answered over the weekend, so that we might have them available on Monday.

The Chair would tentatively announce that if we can get Mr. Hernandez' nomination papers up here today, we will have the hearing with respect to his nomination Monday afternoon at 2 o'clock in our regular committee room up on the fourth floor. But there is the "if" that we will have to have the papers available before we can do that.

So I advise you to read your Monday morning newspapers as to the Senate's schedule. We will get notice to as many as we can, and we are planning on doing it if we can get the papers.

Finally, before I yield again, Senator Chafee brought up the wastewater construction program, and there has been a concern there, Mrs. Gorsuch, on the part of this Senator, because I have been involved in that program now for 10 years I have served on this committee. And that is that in the past, we have worked hard and slightly parochially to look after the more rural parts of the Nation.

When I read words about reconstructing a program to make it more cost-efficient, I agree, of course, with cost-efficiency, but I often fear that those words may mean very large plants in very large cities, and no help at all for the towns of 4,000 and 5,000 and less that cover so much of America. And I would hope that between our committee and the Reagan administration, we can remember there is a lot of rural America that needs just as much help in taking care of its wastewater as do the large cities of the country.

Mrs. **Gorsuch**. Thank you for your advice.

Senator **Stafford**. Senator Hart.

Senator **Hart**. Mrs. Gorsuch, have you had a chance to meet with any of the permanent employees at EPA?

Mrs. **Gorsuch**. Yes, I have, Senator.

Senator **Hart**. I would be interested in your reflections on their competence and professionalism generally.

Mrs. **Gorsuch**. The people I have met appear to be very competent and very professional.

Senator **Hart**. The reason I ask is not because of anything you have said, but things others have said in support of you and in introduction of you, as well as things members of the committee have said, that somehow there is a rogue environmental elephant loose in the EPA which more often than not is beyond the scope of its authority, biased and unprofessional, and seeking to regulate everything in can get its hands on. However one feels about environmental laws themselves, that has not been my experience. I have tried to penetrate all that rhetoric and find out who is doing all these bad things. You have properly taken a position that the Congress makes the laws of the land. The Congress obviously is, through the electoral process, responsible to the people of the country, every 2 or 6 years. The President appoints people to carry out those laws, and it has been my experience that by and large they are competent, professional, committed and not totally biased people.

They attempt to do their job, whatever their personal feelings are, within the scope of the law.

So I was just wondering whether you also shared the perception of some that there are some mad environmentalists loose over there writing regulations down willy-nilly. I take it that is not your impression?

Mrs. GORSUCH. Well, there are 10,000 employees, and I don't want to mislead you, I have not met them all.

To the extent I have met and dealt with people at the Agency, I have found them both professional, dedicated and hardworking. And I am sure that is true of most of our civil servants regardless of the department of the Government. I know you are interested in my philosophy and approach, and certainly in dealing with people it has always been my approach to have very high expectations of their performance and I have no reason to doubt that will be met.

That general philosophy will be brought to bear in terms of managing the Agency. I know there is a great deal of expertise there, I know there are people there who have been involved in the development of the environmental laws since 1970 as they emerged under that agency, and who developed a great deal of hands-on experience which I hope to draw from and work with.

Senator HART. That is an excellent statement, I think.

I hope once you get in and meet more people, if you find any of these unauthorized regulators that some believe are rampant throughout the Government, that you fire them, if they are operating outside the scope of the law.

On the inspection and maintenance program, as you know, the law requires automobile inspection and maintenance in all areas that don't meet by 1982 the national clean air standards, for that area to receive an extension until 1987. Back to our own Legislature here—because that is again a case in point—one house, as I understand it, of our State legislature, has passed and the other is considering postponing the State's I. & M. program. And one of the justifications for that bill is that this administration, in the words of the spokesman for that legislation, would not endorse the current requirement of inspection and maintenance, and obviously the sanctions that go with that.

What are your views on that? Would you counsel State legislators because we have a new administration that is opposed to inspection and maintenance that they do something to delay it, or what?

Mrs. GORSUCH. Senator, I repeatedly tried to assure you and others that I understand the oath of office which requires the upholding of all the laws and the Constitution. The requirement for sanction is statutory.

Senator HART. So no set of circumstances could arise where you might be meeting with officials of other States and they would say we have to decide whether this year to enact a particular program, what is the President going to do, should we move forward or not? You cannot envision the circumstances where you would say you don't have to do that or our view will be to try to change that, or whatever.

Mrs. GORSUCH. If you are asking if I have counseled with any members of my legislature, the answer is no.

Senator HART. No; that is not what I asked. What I am trying to find out is the attitude of the administration and you in the administration——

Mrs. GORSUCH. Let me reassure you once again, Senator, that the statute provides for sanctions to be imposed on any area that cannot meet the 1982 deadline and which does not adopt an inspection and maintenance program. Upon adoption of the program they receive a waiver until 1987.

To the extent I am charged with the implementation and duties and powers of the Environmental Protection Agency, and have a statutory duty to impose sanctions there, I am prepared to undertake those duties and perform them according to the law.

Senator HART. Will you attempt to get that law changed?

Mrs. GORSUCH. I believe there will be several recommendations made by the administration for changes in the Clean Air Act. Whether or not any address the specific issue of sanctions is something I don't know at this time. I told you before that in terms of my own particular philosophy, and it has not changed, I believe incentives are always the better measure for achieving a goal as important as this goal.

Let me try to be more responsive to you.

I think we left this line of questioning with your stating: If you give incentives and they are not taken advantage of, then don't we have to impose sanctions? If a person does not exercise the sanction——

Senator HART. No; I said what options are there besides sanctions?

Mrs. GORSUCH. That bears further examination, and it will be an area of thoughtful consideration.

But one option available might be to examine those incentives, to see if they are strong enough, because I personally know that the goals of the Clean Air Act and the Clean Water Act are shared by State officials. It is not as if those goals were established in Washington and that some subversive group in all States say we want to perversely thumb our nose at the Congress or the Federal Government.

The goals are the same. The question is how can we work together in meeting those goals.

So it might be a proper course of action to see whether or not the incentives that are provided in the law are adequate to meeting the same goals. That is just one approach we might take in reexamining the Clean Air Act.

Senator HART. Not directly on the question of sanctions, but the inspection and maintenance program itself, all previous Administrators of the EPA and the National Commission on Air Quality have concluded very, very strongly that the inspection and maintenance program is the single most effective way in addition to the emissions standards to reduce auto-related pollution, and what I am trying to find out is whether you think there is a better way than a State inspection program leaving out of the answer the question of sanctions or what you do if one is not enacted.

Mrs. Gorsuch. In terms of my knowledge and understanding, Senator, I know of no other single better way, which is the reason, if not the only reason, that I was the prime sponsor in the House for Colorado's inspection and maintenance bill.

Senator Hart. Thank you.

Senator Stafford. I would remind my colleagues that we have two panels of witnesses to go yet, but, of course, we would in no way curtail questioning.

Senator Chafee?

Senator Chafee. Thank you for that nice lead-in, Mr. Chairman.

Mrs. Gorsuch, a followup point I made before my time was up was that some municipal plants are under court orders, and it seemed to be the suggestion that there might be a priority given to these plants as far as the funding goes since the funding will be reduced. I think that EPA in view of the reduced funding, whatever it is going to be, and the figure 2.4 is constantly mentioned, as opposed to 3.6, I think EPA has really got to reconsider the suits it has brought against those plants. I mean it is impossible for the plant to complete the goals without the Federal funding being at hand or prospectively being there. I would recommend you take a look at the suits instigated, some by individuals, but when EPA brought the suit, they put the community in a difficult position, particularly as I understand the reforms included the appeal of the reimbursement for the funding that has already taken place by the States in anticipation of the Federal Government coming up with its share. Are you familiar with that?

Mrs. Gorsuch. Yes, Senator, I am.

Senator Chafee. I just want to say, I don't understand the administration's position on that particular point. It seems to me if you encourage the communities to move ahead with advanced EPA approval, to go ahead and float their bond issues, get on with the project at beating inflation and moving forward with the continuous flow, have the job done all at once, rather than piecemeal, that the Federal Government will win in the end. It is like the highway program, many of the States went ahead, bonded and did their own construction waiting for subsequent reimbursement.

Why does the administration have the view that that should be forbidden?

Mrs. Gorsuch. I can't speak for the administration as a whole. As you know, I am a private citizen, but it is my understanding that that particular provision of the law never received any appropriation from this body.

Senator Chafee. Well, we passed it.

Mrs. Gorsuch. The laws passed, but there was no appropriation ever made available for reimbursement.

Senator Chafee. We would have to wait for the appropriations committees, that is true, we would have to expect that and if they did not appropriate, that is that.

But I think there is merit in this system of proceeding in anticipation, hopefully, of reimbursement; at least the job gets done.

Let me quickly ask you about this task force again that is set up in which Secretary Watt is the chairman and you are on, the Environment and Natural Resources.

I am not sure how that works now. Take a matter like should there be no cost-benefit formula involved in the national clean air standards.

Let's say there was a suggestion that that be changed. Does the committee take a vote on it or how does that work?

Mrs. GORSUCH. Frankly I am not familiar with the procedure followed in the Cabinet council. I suppose that would depend upon the chairman.

Senator CHAFEE. Well, you are an independent agency, you would represent an independent agency reporting directly to the President, and I would be troubled if you were bound by some majority vote in an area of this importance to the environment.

Mrs. GORSUCH. I don't feel I am bound by any vote.

Senator CHAFEE. You feel you still have your access to the President to carry your views to him?

Mrs. GORSUCH. Absolutely.

Senator CHAFEE. There is one big majority vote that binds here.

Mrs. GORSUCH. That is quite true in the legislative process. I might just elaborate that I have had an opportunity to meet with the President on two occasions since his nomination of me, and with the Vice President also, and I do not believe that access to the extent that it is necessary or desirable in terms of my duties and powers will be any difficulty whatsoever.

Senator CHAFEE. I hope that is so and I hope you will be sufficiently aggressive in getting to him to put your views forward.

Thank you.

Senator STAFFORD. I was only going to comment that Mrs. Gorsuch will be bound by our vote on her confirmation.

Are there any other questions at this time?

Senator SYMMS. Mr. Chairman, I just have one comment to make, and that would be, Mrs. Gorsuch, with respect to the fact you don't know all 10,000 people that work at EPA, and I would like to give you one bit of encouragement, don't let it get above 10,000. If you have reduced the number of people, maybe you can get to know more of them over the years.

Mrs. GORSUCH. Thank you, Senator.

Senator HART. Mr. Chairman.

Senator STAFFORD. Senator Hart.

Senator HART. Mrs. Gorsuch, do you have any views on the so-called acid rain problem, and how high a priority, how important generally do you think it is? As you know, when President Reagan met with the Canadians, that is an issue they raised very strongly.

Many people, not only in Canada, but in the Northeast are becoming more and more concerned about that and I wonder if you have any thoughts on it.

Mrs. GORSUCH. I know it is a matter of national and international concern, and further, that this Congress passed an appropriation last year to set up a task force for research concerning—it involves EPA to a large degree, and is charged with the responsibility of determining both the nature and the extent of the problem, hopefully with the ultimate purpose of determining the solution to acid transportation, and its effects upon the environment, particularly in the Northeast. I further know that your commission has made several recommendations concerning acid rain, among them concerning a moratorium on new emissions of SO_2. I have not prejudged the issue; I don't come before you as a single expert in terms of this is what we should do in terms of acid rain. I know it is difficult and it will be high on my list to monitor.

Senator HART. Thank you.

One totally unrelated issue, but one of concern to our State and region is the whole question of uranium sites. As you know, there are a number of sites in our State and Senator Domenici's State and other States in the region, where like toxic problems they were swept under the rug and now are popping back up.

Here is a case where EPA has not moved at all. What do you think you can do as Administrator to get some EPA standards set forth? It is now 3 years after we passed the act and we still don't have those standards.

Mrs. GORSUCH. Senator, I will have to look into that. I have no idea what the cause for delay is. I know that the Environmental Protection Agency in the past has failed to meet congressional deadlines. It is hard to assess if the dealines were realistic or not. I do know about the uranium mill tailing problem. As I understand it, the program rests with the Department of Energy, and it is dependent upon the EPA's standards, and certainly I cannot explain the delay, but I will look into it, if confirmed.

Senator HART. And if there are significant reductions of personnel, it will make it that much more difficult to make these deadlines.

Likewise, there is delay where EPA is involved in the issuance of standards for disposal of high level nuclear waste, and the concern of some of us is that the NRC will promulgate something itself before EPA does. It ought to be the other way around, EPA should be in ahead of the NRC in establishing standards for disposal of high level waste, so I would urge you to take that under consideration and move on that as fast as you can as well. Both of those are hanging fire and extremely important.

One final question, Mr. Chairman. A number of people—Senator Chafee specifically—have asked about the Vice President's Task Force on Regulation. My understanding is that there is also a Cabinet group that Secretary Watt is chairing on the Administration's position, specifically, I think, on clean air.

Do you know if that is the case, in fact, and if so, what is the relationship between the Cabinet group under Secretary Watt and the Vice President's Regulatory Relief Task Force?

Mrs. GORSUCH. Well, I tried to describe that whole process to the best of my knowledge earlier this morning, Senator Hart.

Senator HART. Sorry, I missed it.

Mrs. GORSUCH. I will reiterate it. The President chose a mechanism for his Cabinet to work through Cabinet Councils. There is one Council on Natural Resources and Environment chaired by Secretary Watt, and composed of Cabinet members.

Under the Council there will be various working groups, one of which will be a working group on the Clean Air Act amendments that may be proposed by the Administration. That group will include the Administrator of EPA as well as representatives from the Departments of Transportation and Commerce, Council on Economic Advisors and others.

That group is also committed to working with the Vice President's Task Force on Regulatory Reform in an effort to coordinate what I think is a prudent approach to the act of governance, which is to make sure you have input from all affected parties that may have something to contribute.

Senator HART. Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator.

Mrs. Gorsuch, I hope you will follow Senator Hart's suggestion on a careful study of the question of acid rain, because it is a serious irritation between the Canadian Government and ourselves, and much better understood there than here, and we have the 10-year study that you mentioned under way. but it seems to me regrettable that that study is going to take so long to produce some results. And I would hope that the study might be able to produce some interim information of value to the American public in the next 2 or 3 years. But quite possibly with your urging we could get an interim report out within the next 24 months at the latest.

Mrs. GORSUCH. Thank you, Senator.

Senator STAFFORD. If there are no further questions, we will thank you very much for what must have been a long day for you, Mrs. Gorsuch.

Mrs. GORSUCH. It has been my pleasure and I look forward to many future long days.

Senator STAFFORD. Thank you.

The Chair would now ask the environmental panel to come to the witness table. That includes Elizabeth Davenport, coordinator, Environmental Action; Blakeman Early, Washington representative, Sierra Club; John McCormick, Washington represenative, Environmental Policy Center; Richard Oshlo, legislative representative for toxics and pollution, National Wildlife Federation, and Rafe Pomerance, president, Friends of the Earth.

STATEMENTS OF ELIZABETH A. DAVENPORT, COORDINATOR, ENVIRONMENTAL ACTION; A. BLAKEMAN EARLY, WASHINGTON REPRESENTATIVE, SIERRA CLUB: JOHN McCORMICK, WASHINGTON REPRESENTATIVE, ENVIRONMENTAL POLICY CENTER: RICHARD C. OSHLO, LEGISLATIVE REPRESENTATIVE FOR TOXICS AND POLLUTION, NATIONAL WILDLIFE FEDERATION; AND RAFE POMERANCE, PRESIDENT, FRIENDS OF THE EARTH

Senator STAFFORD. The committee welcomes you. In the time constraints we are now all facing, might I heartily recommend you allow us to put your statements in the record in full and that you just summarize them for us verbally?

Not knowing in which order you prefer to go, the Chair would invite you to determine the order of your presentations.

Is it ladies first?

Mr. McCORMICK. We might consider going right to left as we are seated here, if that is all right with you.

Senator STAFFORD. Fine.

STATEMENT OF RAFE POMERANCE

Mr. POMERANCE. I will attempt to summarize my statement without reading from it, so I may do a little ad-libbing.

The mandate of EPA is an enormous one. Essentially, the EPA is required to protect the health of the people from numerous environmental hazards and also has a mandate to protect many of the ecological systems upon which humans and other species depend upon for their well-being and at times for their survival. The increasing impact of the industrialization, population growth, and technology in our society continues to have greater and greater impact on ecological systems and at times on human health, the establishment of EPA and its growth is a recognition that society has determined that the marketplace system is insufficient to protect public health and ecological systems loan many of the impacts because of the way our economy operates; so we have set up a system that gives people certain rights to be protected from environmental hazards.

EPA does this in a number of ways through a number of laws.

I wanted to state that at the outset, because it is important for any person who will undertake to administer this agency to concur in that philosophy that the Federal Government has a major regulatory role to play in protecting the environment.

Without that role such environmental protection is basically impossible.

I want to identify some major concerns that we have with the nomination, and to raise some issues in the context of the nomination.

The first has to do with the budget and the budget process. The environmental community has been very concerned as I think everybody else affected by the budget has, about its impact. The fiscal year 1982 recommendations will have an enormous affect on EPA, not as great, obviously, as in some other agencies, but in particular with regard to the regulatory budgets we have a problem.

The Agency has been growing enormously, its mandate is greater than it has been with the passage of superfund. Yet, as Bill Drayton, who was Assistant Administrator of EPA, has testified, and I would like to submit his testimony for the record, EPA will essentially be at personnel levels associated with 1977, even though the Congress has passed a number of major statutes. So we see a crunch coming and in a way it has begun already. It is not overwhelming yet, but it is worrisome. The noise program is disappearing, public participation program is about gone, our major regulatory efforts will be delayed because of lack of personnel. This is of grave concern to us because EPA must maintain its capability to carry out the job that this committee and the Congress has given us.

I say that in the context of this nomination, because it has been reported that Mrs. Gorsuch, according to people who have worked with her, favors a 20-percent reduction in personnel over the next couple of years. That was a new paper story I will submit for the record.

I don't know if that is true, but I think that is an important issue for the committee to look at. What is her commitment there?

Second, on the personnel issue, that same story reported there was consideration being given to getting rid of the Agency's top management, which is perhaps of even greater concern, and I thought that was worthy of the committee looking into with regard to what her intentions are.

I might say this committee has greater jurisdiction than EPA. There are very small line item cuts being made that have not gotten a great deal of attention because they are too small, but will have impact on our ability to carry out the programs. We have seen reductions in the Fish and Wildlife Service, elimination of buying new parks and so on.

The second major area of concern that we have had is this question of who will run EPA. And many of those issues were discussed this morning. Our two primary considerations are, one, there is now a new process set up in terms of reviewing regulations. Essentially what happens is this, EPA comes up with a proposal then it will have to negotiate the final regulation with OMB.

That is the way the regulatory impact analysis process is going to work. And the question is, is that a public process, is that what this committee intends? And I think it would be advisable to try to set the record straight that the Administrator of EPA runs the regulatory agencies and is to a great extent independent of other agencies of Government, although obviously not altogether.

The second question raised was, Who is in charge because of the existence of the Cabinet level task force, the Committee on Natural Resources? It strikes me that what we may see is that EPA Administrator will walk into such a committee meeting and may be overruled. We don't know how the committee will work and so we would appreciate additional clarity.

The other major point is a philosophic one here. I think the Administrator has the responsibility not only to carry out the will of Congress, but to be a responsible person on emerging issues. We are now at a point where hundreds of lakes in North America may die as a result of the acid rain problem. Our gound water is being polluted, and we also face, as a result of building up of carbon dioxide in the atmosphere, major climate change during this century. It is an issue for now, not for the future.

Our hope is the next Administrator of the EPA will be a willing, responsible person so that there is some leadership here on emerging issues.

In conclusion, we stated in our testimony that the Administrator, the nominee should pledge, or the committee should receive assurance that she would, one, defend funding for EPA within the Administration during her tenure in order for funding to carry out the laws and requirements; and two, she would not be stifled trying to carry out the will of Congress by OMB, and three, she would take a leadership role in emerging environmental problems. It was our feeling unless the committee was completely satisfied on these three points, that her nomination should not be approved.

Thank you.

Senator STAFFORD. Thank you, Mr. Pomerance.

It would be the Chair's intent to hear the entire panel first, and then we will go to the questions.

So we will come back to a very familiar face here, Dick Oshlo. We are delighted to see you here again, Dick, and we are glad to hear from you representing the National Wildlife Federation.

STATEMENT OF RICHARD C. OSHLO

Mr. OSHLO. Thank you, Mr. Chairman, for your very kind comments. It is a pleasure to appear before you, for a change, rather than on the other side of the committee as a staff member.

The National Wildlife Federation does not oppose the nomination of Anne Gorsuch to be the Administrator of the Environmental Protection Agency. Nevertheless, we are concerned about this nomination, and we have various questions about certain policy issues which we believe should be examined.

There are questions about her effectiveness and leadership, which go to the very heart of EPA's independent status and of who will be making our national environmental policy.

EPA was charged in 1970 by the Congress to protect our public health and enhance our environment. It was established as an independent agency to serve as the public guardian for a livable environment. It has a highly technical role, and the Administrator must exercise strong leadership and be willing to balance competing interests. That person must be independent enough to discern the public interest from among a myriad of special interests and even enforce regulations vis-a-vis other agencies.

The Agency was never meant to be an extension of the Office of Management and Budget [OMB] or the Department of the Interior. The Administrator is expected to fight for EPA's statutory programs within the Administration. That person must run the Agency. He or she must review EPA's regulations.

Members of this committee should be interested in any possible erosion of EPA's designated authority. They should determine what will be Mrs. Gorsuch's role as Administrator. Will she be committed enough to assure that environmental decisions are made at EPA? Will she actively enforce legislatively mandated environmental regulations? Will she develop, for instance, the recommendations for the reauthorization of the Clean Air and Clean Water Acts? Or will that authority be abdicated to OMB, or some other Cabinet-level body?

We have made great strides in improving our air and water quality, halting the spread of toxic substances, controlling the haphazard discharge of solid wastes. The progress we have made in the 1970's will face serious challenges in this decade. The Senate Public Works Committee has created the impetus for this progress, and we cannot afford to see an administrative erosion of these great steps forward or missed opportunities in the future.

It is not the Administrator's responsibility or authority to legislate changes. Will Mrs. Gorsuch implement the programs passed by the Congress or open the Agency to unnecessary external interferences? The answer to this question must be examined closely. The National Wildlife Federation hopes the Administrator will assure that EPA continues to be at the forefront of developing effective environmental programs, and if Mrs. Gorsuch is confirmed, we look forward to working with her in order to reach that desired goal.

Mr. Chairman, that concludes my statement at this point, and I will be happy to answer any questions.

Senator STAFFORD. Thank you very much, Dick.

Ms. Davenport.

STATEMENT OF ELIZABETH A. DAVENPORT

Ms. Davenport. Environmental Action organized the original Earth Day in 1970 and has since been active on a wide variety of environmental issues. We appreciate the opportunity to present our views on the nomination of Anne Gorsuch to be Administrator of the Environmental Protection Agency.

Environmental Action opposes the confirmation of Mrs. Gorsuch as Environmental Protection Agency Administrator. We believe that she is an administrative novice and lacks necessary technical expertise. The EPA Administrator has great discretion in implementing the laws passed by Congress.

Our organization fears that, if someone with Mrs. Gorsuch's weak environmental credentials is confirmed, EPA will be unable to carry out its mandate. This could jeopardize environmental quality and the health and well-being of millions of Americans.

Managing the Environmental Protection Agency is a complex and difficult task. EPA is often caught in a double bind—too many problems and too few resources. Congress, and this committee, have given EPA a broad mandate under a number of environmental laws passed during the past 10 years. Rather than grapple with many of the finer points, Congress has often delegated to EPA the enormous, and delicate, task of drafting the regulations to carry out these laws.

But EPA has rarely received adequate resources to implement these congressional mandates. Traditionally, administration budget requests and congressional appropriations have severely underestimated the amount of staff and money needed to do the job.

Running the Agency under such circumstances is difficult enough. Now the budgets of a number of critical EPA programs are being stretched even further.

For example, Superfund legislation was passed by this committee and enacted into law in December 1980. Choosing which hazardous waste sites will be given priority attention will be an extremely complicated task, requiring a detailed set of criteria and a ranking system. Congress left it up to a national response team to draft a national contingency plan to implement Superfund.

Yet the national response team has proposed only the vaguest of criteria to determine when, where, and how the dumps will be cleaned up. And the Superfund budget is slashed a drastic $60 million in the Reagan administration's budget.

No one is opposed to eliminating waste or improving the efficiency of EPA or any Federal agency. In fact, environmentalists recently proposed a counterbudget which suggests ways in which the Federal budget can be cut while important environmental programs are preserved.

Some of the most delicate and important compromises on environmental regulations have been negotiated by EPA. The Agency will increasingly be in this kind of position as Congress reconsiders the Clean Air Act and other major environmental laws. During this process, EPA will need strong, knowledgeable, and respected leadership, a topnotch administrator able to recognize tough tradeoffs and make decisions in the best interests of the American people.

We seriously question whether Mrs. Gorsuch is the right person for the job. While we have no doubts that she is very intelligent, her background in environmental matters is far from solid. She has been an attorney for the Mountain Bell Telephone Co. She has worked on juvenile court cases and welfare support cases as an assistant district attorney in Jefferson County, Colo., and as a deputy district attorney in Denver. As a Colorado State legislator, she chaired the State affairs committee and was known primarily for her position on mandatory sentencing of felons.

The people familiar with her environmental record in the Colorado legislature have also raised questions about her qualifications for the EPA administratorship.

Frank Traylor, director of the Colorado Health Department, who dealt with Mrs. Gorsuch on hazardous waste issues, described her as a very smart person. But he added that she has "no administrative experience. If Reagan wants to cut environmental regulations back, that is what her agenda will be." Reed Kelley, legislative representative for the Colorado Open Space Council, a State environmental group, said, "We are very concerned that she has such a negative attitude toward the environmental program."

Senator CHAFEE. Ms. Davenport, I note that this is a rather lengthy statement, and if you are going to read it all, it will be rather burdensome. I wonder if you could just summarize it, and we will obviously put the entire statement in the record.

Ms. DAVENPORT. We do believe that Mrs. Gorsuch lacks the necessary administrative and technical expertise for the position and fear that Mrs. Gorsuch's weak environmental background will make her unable to carry out the mandate at the EPA.

We question whether it may jeopardize the quality and the health and well-being of millions of Americans.

The position of Administrator is complex and difficult. EPA is often caught in a double bind with too many problems and too few resources, and we know that Congress, having delegated to EPA the task of drafting regulations to carry out these laws will want a strong and knowledgeable spokesperson in there.

Opposition has come from other varied quarters, the Washington Post, American Health Association and then here today numerous environmental groups, or at least raising questions about her role at the agency.

But perhaps most disturbing is the fact that so little is known about Mrs. Gorsuch's background, in spite of the fact that her nomination was announced by the Reagan administration 10 weeks ago. The EPA Administrator job is certainly far too important for the American people to entrust it to an unknown. If our democratic system of government is to function effectively, my administration must be held accountable for its appointments to key Government positions.

It is clear that the American public is demanding more environmental protection, even at a cost. A recent ABC/Louis Harris poll, for instance, revealed that 93.6 percent of Americans felt that Federal standards prohibiting dumping of toxic wastes should be made more strict than they are now.

In addition, 86 percent of Americans felt that toxic chemical dumps and spills should be given a very high priority for Federal action. Given Ms. Gorsuch's lack of regulatory expertise, concerned Americans have little reason to believe that their wishes will be acted upon.

Environmental laws which have passed through this committee contains no mention of cost-benefit analysis and hold environmental protection paramount. President Reagan's recent Executive order, however, clearly states that the benefits of any regulation proposed by his administration must outweigh the costs.

The current state of art of cost-benefit analysis is woefully inadequate and does not fairly weigh the costs and benefits of environmental regulations we want to make sure the administration or the EPA understands that and is willing to fairly weigh and fairly quantify those benefits in relation to the cost to the EPA as it was created on July 9, 1970, by President Nixon, and it was created on July 9, 1970, by President Nixon, and it was created as an independent agency to remove the inherent conflicts between environmental protection and existing agencies' programs.

We feel that there is a continuing need for a strong independent Environmental Protection Agency and that has not changed in the past 10 years.

We think it is possible Ms. Gorsuch's nomination could lead to an erosion of EPA's independence and effectiveness. It would threaten proper implementation of the environmental laws of this country thereby frustrating both the intention of Congress and the hopes of the American public, which want environmental protection.

At a time when Americans are extremely skeptical of the ability of Government to do anything, the confirmation of a poorly qualified Administrator of EPA can only aggravate such cynicism. We urge the committee to reject this nomination.

Thank you.

Senator CHAFEE. Thank you.

I am afraid we need to be strict, we have others coming in, and Mr. Early, you are next, but the 5-minute rule will definitely apply from now on.

STATEMENT OF A. BLAKEMAN EARLY

Mr. EARLY. Thank you. I am appearing on behalf of the Sierra Club. My testimony was endorsed by Environmental Action, but also the Resources Defense Council. This is a pleasure, of course, to appear before the committee to discuss the nomination of Mrs. Gorsuch. And while the nomination hearings will primarily focus on the qualification of the nominee, they also provide good opportunity for the committee to clarify how critical concerns are going to be decided, and to insure they will be made in a fair and lawful fashion.

Such review is particularly important in light of the shifts of emphasis within the Reagan administration directed toward regulatory reform in addition, it is becoming increasingly obvious as the Reagan administration begins to organize itself that the locus of power is shifting away from the Environmental Protection Agency, toward the Office of Management and Budget and the Secretary of Interior.

The inordinate delay in even nominating a candidate for EPA Administrator is itself an indicator of that fact. The Secretary of Interior, James Watt, now chairs a Task Force on Natural Resources and the Environment which will be the major policymaking body for the administration on issues in its jurisdictional area.

The Office of Management and Budget's own Office of Regulatory and Information Policy has prepared a 43-page critique of EPA which recommends major program revisions and reviews. Several of its recommendations have already been adopted by yet another entity within the administration which will have a major impact on EPA's programs, the Regulatory Relief Task Force, chaired by Vice President George Bush.

So we see that we have diverse entities within the Reagan administration which will be seeking to set and change EPA policies. These policies deal with the implementation of legislation written by this committee over the past decade.

This committee meticulously and laboriously crafted legislation which did reflect concerns for costs and weighed them with the need to protect public health and the environment. For instance, no one can argue that inflation and the economy were not major issues in 1977 when both the Clean Air Act and the Clean Water Act were revised.

We urge the committee to examine during these hearings whether the balance which has been struck in all these important pieces of legislation may be changed by means of a closed, administrative process which does not involve a rigorous review or a fair hearing of all points of view. Our concerns about this process lie in two areas.

First, whether the attitudes of Ms. Gorsuch, who endorses broad use of cost-benefit analysis in EPA rulemaking may cause her to introduce costs as a factor in decisions where they are currently prohibited by law.

Second, whether such decisions will be substantially taken out of Mrs. Gorsuch's hands and made by others within the administration, and dictated to her by means of ex parte communications not subject to public scrutiny.

We commend the committee for examining and introducing the cost-benefit analysis, and certainly we were pleased by Mrs. Gorsuch's response in that regard.

In 1979, this committee held hearings reviewings similar abuses which took place under the Carter administration. Members of the Council on Wage and Price Stability, the President's Council of Economic Advisers and the Regulatory Analysis Review Group often communicated with the Administrator of EPA after the close of the public record, urging the consideration of economic factors in the setting of regulations which are not even legal.

It was learned that during these shadow rulemaking processes, often the review which precipitated illegal communications with EPA was conducted by midlevel bureaucrats, after only a very shallow examination of the relevant issues under consideration. Members of this committee, including the present chairman, expressed significant concern about the situation at that time.

And I think, Mr. Chairman, your fine statements regarding the Office of the Administrator and the independence of the EPA certainly very clearly sets forth how this independence should be maintained, and we agree with it.

I include as an appendix to my testimony, a memorandum which supports in a very thorough fashion this point of view. The situation under the new administration, however, indicates the history may well repeat itself here. As we all know, President Reagan has pledged to reduce the cost of Government and there are numerous forces within the administration dedicated to attaining that objective.

It is not at all clear that these entities will respect the independent status which EPA should enjoy in decisionmaking and not seek to influence EPA decisions without the benefit of public scrutiny of their views.

The most obvious of these entities within the administration is the Natural Resources Environmental Task Force, chaired by Secretary of Interior James Watt. Secretary Watt is reported to be a close personal friend of Ms. Gorsuch; they worked together closely in Colorado, and during the period prior to Ms. Gorsuch's nomination, she has in fact been occupying offices in the Office of the Secretary of Interior.

The Natural Resources and Environmental Task Force is reported to be the principal policymaking body on all natural resource and environment issues, including those under the EPA's jurisdiction.

Mr. Watt's involvement in EPA affairs includes reportedly interviewing all candidates for Assistant Administrator positions within EPA.

Clearly, the question arises whether Mr. Watt and the task force he heads will press for the adoption of policies by EPA in its rulemaking in a manner which fails to recognize the independent status of EPA rulemaking and the strong need to subject all recommended rules or changes to rules to public scrutiny in a timely manner.

The second entity of concern is the Task Force on Regulatory Relief. This task force is mandated to carry out the President's Executive Order 12291 to insure that new regulations and existing regulations maximize the net benefits to society and select the alternative involving the least net cost to society.

While this Executive order is to apply "to the extent permitted by law," it is important that the legality of this requirement as specifically applied to EPA rulemakings be subject to public scrutiny and debate.

In addition, the overall mandate imposed by the Executive order and the specific mandates which will be imposed by the Regulatory Relief Task Force itself impose substantial burdens on EPA to gather data, while EPA is simutaneously undergoing alarming cuts in its personnel and budget levels.

Finally, reviews by the task force will impose substantial delays in violation of at least the spirit, if not the letter, of legal requirements imposed both by Congress and courts.

Finally, the Office of Regulatory and Information Policy, which is part of the Office of Management and Budget, appears to be a major influence on EPA policy and rulemaking. An internal OMB document which has been the subject of articles in the press, recommends a major effort to scale back EPA rules across virtually every program area.

Some of these recommendations in our view would be illegal. For instance, it is apparently OMB's position that EPA may consider costs when setting the statutory margin of safety under the national ambient air quality standards.

We find no support in either the statutory language or the legislative history for this point of view. OMB will seek a major review of hazardous waste regulations under the Resource Conservation Recovery Act, as well as a reevaluation of effluent limitation guidelines and pretreatment requirements to control priority toxic pollutants under the Clean Water Act.

The regulations under both these programs are substantially behind in meeting the statutory mandates devised by this committee. In addition, OMB has already reviewed both these regulatory programs in the past.

It is apparent that OMB will continue to delay and re-review regulations until its viewpoint is completely accepted, regardless of the regulatory promulgation schedule mandated by Congress. Of course, the OMB has become a major target for industry suggestions to weaken EPA's rules and authorities. Just how all these suggestions will be transmitted to EPA and how OMB will seek to bend EPA to its point of view is largely open to question at this time.

In order for the committee to insure that history does not repeat itself, we think it is important that the committee obtain a commitment from Mrs. Gorsuch that she will limit the manner in which Presidential advisers seek to influence EPA rulemaking actions.

Neither the President nor his advisers have the authority to dictate the outcome of EPA rulemaking actions, and are therefore subject to legal constraints governing the participation of members of the public in the rulemaking process.

It is therefore highly appropriate for the President or his advisers to submit comments and propose rules and participate fully in the rulemaking process, so that the interaction of varying points of view may provide a thorough record on which Mrs. Gorsuch can base her ultimate decision, and which would subsequently be available for judicial review.

Indeed, there is a substantial legal argument that the Administrative Procedure Act would require such postrecord comments to be subject to the public comment period, particularly if such communications involve new material which had not previously appeared in the record, or new analysis of old material.

We feel that it is essential that Mrs. Gorsuch commit herself to maintaining the independent status EPA has. Through the adoption of these guidelines for executive branch intervention in EPA rulemaking processes, Mrs. Gorsuch can insure that the concerns for the impact of EPA rules on the economy are integrated with the mandates EPA has to protect public health and the environment.

In conclusion, we have outlined our concerns regarding whether the legal integrity of the laws EPA administers and the independence of EPA as an agency with very significant and specific responsibilities will be maintained under the direction of Mrs. Gorsuch.

If the committee cannot clarify that these laws will not be compromised administratively, and that Mrs. Gorsuch will defend EPA's status as an independent agency and assert her independence and willingness to make the decisions entrusted to her fairly and independently, then we urge the committee not to confirm her nomination as Administrator.

Senator **STAFFORD**. Thank you, Mr. Early, we appreciate your testimony here today.

And as the final witness on this panel, John McCormick. If you could, Mr. McCormick, we would appreciate your summarizing your statement.

STATEMENT OF JOHN L. McCORMICK

Mr. **McCORMICK**. Mr. Chairman, I am John McCormick, a Washington representative from the Environmental Policy Center, and it is my pleasure to be here to present our views on Mrs. Gorsuch's nomination.

We appreciate the fact that our legislation here was written in this committee and reported in this committee. The Clean Air Act, the Water Pollution Control Act, Safe Drinking Water Act and NEPA have all become the backbone of this Nation's effort to assure a healthy and functioning environment for our and future generations. They are as necessary to our industrial and technological society as the mineral resources and skilled work force are to the economy of America, with their enactment and enforcement has come a noticeable and measured improvement in the quality of the air in industrial cities, clean warter in lakes and rivers once considered polluted, and in the licensing and siting process for large industrial and energy-producing projects.

More legislation and expensive cleanup programs are still required to repair the damage caused by the careless and the insidious dumping of chemical and industrial wastes into landfills, streams, and along deserted and public roadways.

There may be 32,000 to 50,000 disposal sites in the United States containing hazardous wastes. Of these, anywhere from 1,200 to 2,000 sites pose significant risks to human health or the environment. Most of these dumps are still being used but as many as 800 may be abandoned.

This committee is continuing to work toward a solution to toxic waste disposal and the complexities of the issue will demand the most sophisticated research and analysis to assure a feasible remedy.

In all of these legislative debates, the committee has called upon the technical expertise of the Federal Government, and principally, the Environmental Protection Agency, to work out pollution control standards, enforcement mechanisms, and permitting procedures.

The knowledge and experience gained within the EPA and its regional offices, in the monitoring and enforcement of these pollution abatement laws has become a valuable investment and asset of the American public. If the demands for a safer and cleaner environment are going to be answered, the EPA must be given the essential political support and leadership from within to assure that the laws are being carried out as the Congress intended.

If that agency fails to carry out its enforcement tasks, regardless of industrial and political pressure, the consequences will be felt in Washington once again as angry voters reenact the fights they waged in the early 1970's to get these laws passed.

President Reagan has not submitted his version of the Clean Air Act to the Congress as yet. Nor has he given any real support for the law. The budget has, understandably, taken higher priority, but it has also given a view of the emphasis his administration will place on enforcement and regulation of the act.

In fiscal year 1982, the Reagan budget seeks to cut $16 million from the proposed Carter budget for EPA's regulation of the Clean Air Act. That is 10 percent of the overall cut of $150 million which the President proposes in all the EPA regulatory-related programs. Given the impact of inflation upon the operating costs of the agency, these cuts may severely limit the effectiveness of the enforcement mechanisms of these important laws.

He has furthered the speculation that his administration will take a softline on controlling industry pollution by nominating an EPA Administrator who offers no previous background in administration nor does she appear to have a high regard for the agency she will oversee.

Instead, she has been quoted as saying that she looks forward to coming to Washington to whittle the agency down to size. Does that mean she envisions an EPA which will do less enforcing and more advising State and local agencies in carrying on those responsibilities?

If that is the case, will her agency be ready and equipped to shift back into the enforcement role when State budgets fall short of the necessary funding to pick up the slack created by EPA's surrender of those tasks.

Mr. Chairman, Mrs. Gorsuch may be a part of President Reagan's new beginning. But she must be aware that her job will be a beginning as much as it will be a continuation of a process that the public has come to know and respect. She will have the obligation to not only prevent pollution but to improve the quality of the Nation's air, land, and water.

If she fails to carry out that responsibility, the public will know very quickly, and you will be hearing from them loud and clear. A polluted environment costs the public in health and dollars. They will not tolerate a retreat back to the old days.

Thank you.

Senator STAFFORD. Thank you.

The committee appreciates the fact all of you on the panel were put in a position of preparing your statements before you had a chance of hearing Mrs. Gorsuch testify today. And the Chair would therefore invite you to, if you wish to, briefly comment in writing between now and Monday to the committee, if you have any changes of your attitude as a result of her testimony which you heard today.

Senator Chafee, do you have any questions?

Senator CHAFEE. No.

Senator DOMENICI. I have a couple.

Senator STAFFORD. Senator Domenici.

Senator **Domenici**. Rafe, you would agree, wouldn't you that President Reagan is clearly within his right to appoint Vice President Bush to head up a regulatory commission study and to make recommendations?

Mr. **Pomerance**. Yes.

Senator **Domenici**. You would agree that will probably include study regulations that are within the purview of EPA, wouldn't you?

Mr. **Pomerance**. Yes, sir.

Senator **Domenici**. You would agree that it would be totally within the President's authority to ask the Administrator of EPA to advise and sit on that commission as one of his designees, wouldn't you?

Mr. **Pomerance**. Yes.

Senator **Domenici**. You would agree it is within his power to have Secretary Watt head a partial Cabinet group called Natural Resources and the Environment, wouldn't you?

Mr. **Pomerance**. Yes.

Senator **Domenici**. And you would agree that they are free to make recommendations to the President of the United States with reference to matters within the purview of EPA, wouldn't you?

Mr. **Pomerance**. I think they always have been.

Senator **Domenici**. At this point, as I listen to your testimony, and Dick's, and it seems to me you are really concerned that the President's people, aside from this nominee, might have views inconsistent with yours and inconsistent with the existing EPA rules and regulations, and that may be true.

Mr. **Pomerance**. I think basically many of the laws which this committee has helped write and many of the statements made by members this morning urge a certain level of independence within EPA. That is to say not only is the EPA part of the administration, but also a regulatory body, and that it always has, in a regulatory process, received recommendations from other agencies.

I think the concern is once that process comes in, what happens thereafter? The EPA proposes a regulation. As I understand the process then, it will enter into sort of a negotiation with OMB, and then some final regulation will emerge. I am not sure that is the regulatory process.

Senator **Domenici**. I didn't get to that one, but I will ask you about that in a minute.

But I heard somebody there at the table saying that we should deny her the nomination because it is possible she will be unduly influenced by people of the President's Cabinet.

You don't think we should turn somebody down because they will be unduly influenced by a member of the President's Cabinet?

Mr. **Pomerance**. I don't think I said that.

Senator **Domenici**. Not you, but somebody did?

Mr. **Pomerance**. My concern is a process, one, that the committee may be wishing that EPA, because of the institutional relations in Government, have a primary decisionmaking authority over certain issues because if it is left within the Cabinet, EPA becomes isolated. That is why those laws were written in a certain way.

And our concern is that some of the processes that have been set up are cause for worry, and we don't know how they will work out.

We do know something about the process that OMB has already set up, and it is not a new issue in the history of EPA.

Senator **Domenici**. The only point I am making, I listened, and I read three of your statements, and I have worked with a number of you for many years, but I really think when you boil it down, that each of you and the groups you represent don't like what you hear the President of the United States saying. You don't like what you campaigned on, you don't like his insistence of cutting regulations that cost too much, and you are scared.

Now, it is not this lady's fault that the people elected him to be President. You have one point that there are some established rules, and you did the same with Carter, you argued he had no right, in the middle of those hearings, to have ex-parte input. Some of you argue that is already determined as a matter of law in this country. I don't agree it is.

I disagree even with the chairman on that point. I really don't believe that the President can be precluded in the comments that he made last year with his agent with reference to coal, and with reference to United States Steel. I don't think the courts will say that is illegal, and it just appears to me that it is stretching it to say "Therefore, since we don't like what we hear about our President, we are frightened that he will massacre what is the greatest, that we have to get a lady nominated to stand up here and say, "I agree with all these people, this President will destroy the agency, and therefore I will resist him."

That is what I read in that. I think that is unfair, really.

Mr. **Pomerance**. In terms of my statement on the budget, I am concerned, and I wanted to alert the members of this committee to some of the smaller items in the budget that I think will have substantial impact on environmental effort that they may not be aware of, but I think they are worth looking at. The budget process does have impact on policy and——

Senator **Domenici**. I was not referring to that.

Mr. **Pomerance**. I have one encouraging thing to say of her statement, which applies to New Mexico. That is that she said:

> I come to you with deep appreciation of the unique beauties we enjoy in our environment, the majesty and grandeur of the Rocky Mountains, the openness and sense of space of our Eastern plains, a climate which enjoys the variety and change efforded by each season of the year.

Now that is a nice background statement for positive consideration of the Clean Air Act. There is a sentiment there we agree with.

Senator **Domenici**. Thank you, Mr. Chairman.

Senator **Stafford**. Thank you, Senator.

Mr. Chafee.

Senator **Chafee**. It seems to me the concerns they are expressing are the concerns we were getting at in the questions here; namely, we know she has got to be part of the team, we know she is selected by the President; but the concerns are, will she be President Reagan's spokesperson for the environment, if she will carry that view in the policy meetings wherein she sits, and after all, it is called the Environmental Protection Agency.

Senator **Domenici**. Of course.

Senator CHAFEE. We were trying to get a firm commitment on that point. I think that there was some sentiment expressed here.

Senator DOMENICI. I don't think so, and we asked a number of questions on it. I was referring to testimony of the young lady in the middle of the table. There is a statement in here that they oppose her because there is a possibility she would be unduly influenced by people in this Cabinet who do not favor environmental protection adequately. And I think that is an unfair statement to make about anybody. So she knows Secretary Watt. Big deal. She meets with him, she is his friend. She is going to probably have to work with him on the President's perfectly legal advisory group. I mean I don't think that is a fair statement, and I was really getting at that. I think that is about the most ridiculous recommendation for turning someone down that I have heard since I have been a U.S. Senator, I really do.

Senator STAFFORD. Is there further comment?

Senator CHAFEE. Do you want to rebut that?

Ms. DAVENPORT. No, I never made that statement, Senator Domenici.

Senator DOMENICI. It was not yours?

Ms. DAVENPORT. No, it was not. I never mentioned Secretary Watt in my statement at all.

Senator DOMENICI. I didn't say Watt, I just interpreted influence as being bad people in the administration, and I would assume that to some, the only real bad guy around is Watt.

Senator CHAFEE. You can throw that spear at Mr. Early on page 6 of his statement, "Secretary Watt is said to be a close personal friend of Mrs. Gorsuch." So you should take on Mr. Early.

Mr. EARLY. Since my name has been mentioned here, the focus is on the process by which the decisions are trying to balance, and conflicting goals are going to be made. Certainly creating more efficiency in Government is a worthly goal. We see happening here, which happened in prior administrations, where OMB and others within the President's Cabinet were not all of the same mind, would seek to influence the decision of the Administrator and influence in a fashion we feel inappropriate, not open ot public rebuttal.

We have seen circumstances in which industries have gone directly to the Office of Management and Budget with their particular point of view and tried to get the office to urge the Administrator to take that view into greater account.

We feel that it is important that these kinds of relationships be staightened out at the outset of the appointment of the Administrator, to insure that EPA is to remain independent and that there is a proper balance here between the need to get some of these regulations out, not subject them to endless reviews, and a need to insure that those regulations are effective both from an environmental protection standpoint and a cost standpoint.

Senator STAFFORD. Is there further comment from the Senators?

If not, on behalf of the committee, I am going to thank all members of the panel for your appearing here and for a long day, and in helping us in our deliberations in considering Mrs. Gorsuch to be the next Administrator of the EPA.

The Chair had received for the committee a letter from a George Riley, an associate of Ralph Nader, and we will make that letter a part of the record at this point.

[The letter follows:]

April 30, 1981

The Honorable Robert T. Stafford
Chairman, Committee on Environment
and Public Works
U.S. Senate
Room 4204
Dirksen Office Building
Washington, D.C. 20510

Dear Senator Stafford:

The nomination of Anne M. Gorsuch to head the Environmental Protection Agency comes at an extremely critical moment in the history of national environmental policy. A decade-long movement that has only begun to counter serious damage to the quality of land, water, and air, is now at a crossroads. If current programs are crippled by poor funding or administrative malfeasance, the modest progress of the past could be erased and we will enter the next decade unable to meet new environmental outrages.

Already, actions by the Reagan administration suggest that the federal government may fail in its responsibility to protect the nation's environment. The administration intends to eliminate 42 percent of the funds proposed by the Carter administration for all environmental programs in fiscal year 1982. The president's top adviser on the environment, the Council on Environmental Quality, will function next year on a budget that is 72 percent less than its current funding level if Reagan's plan is adopted. Even though Congress has yet to begin full debate on revisions in the Clean Air Act, the President's Task Force on Regulatory Relief recently recommended that emission control standards be relaxed.

During these difficult times, EPA must be not only a vigilant guardian of the environment, but an advocate of issues that cross lines of authority. Indeed, EPA was created and structured to fill such a role. In a 1970 message to Congress announcing the organization of EPA, President Nixon wrote: "Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed."

The question facing the Senate is whether Ms. Gorsuch has the experience, commitment and courage to fulfill EPA's mandate and statutory duties while preserving the agency's integrity against attacks from both inside and outside the federal government. Unfortunately, Ms. Gorsuch's record gives little reason for confidence.

Although Ms. Gorsuch's academic record is commendable, she lacks the administrative experience necessary to run an embattled agency of 14,000 employees and a $4.7 billion budget. According to her resume, Ms. Gorsuch's administrative experience is limited to her supervision of a nine-person staff as deputy district attorney, one year as a hearing officer for the Colorado's real estate commission, and her current duties as a staff lawyer with Mountain Bell's legal department.

Ms. Gorsuch's inexperience alone would not disqualify her if she brought to the position outstanding expertise and sensitivity. But her public record, from two terms in the Colorado state legislature, is both narrow and disappointing. Although she was the sponsor of automobile inspection legislation for controlling emissions, she has since stated publicly that she disagrees with the basic concept of the proposal. As head of the interim committee on hazardous waste, Ms. Gorsuch played an important part in destroying any chance for the state's participation in implementing the Resource Conservation and Recovery Act (RECRA).

This country cannot afford an EPA administrator whose inexperience and philosophy could jeopardize the agency's independence. Future generations will pay dearly if effective control of EPA is handed over to government officials and outside interests who are openly hostile to environmental protection.

As a minimum condition for confirmation, the committee should seek the strongest possible assurance from Ms. Gorsuch that she will vigorously resist all efforts to shackle EPA and frustrate its statutory purposes.

The administration, however, has already taken steps to reduce EPA's essential independence. Under Executive Order 12291 issued February 17, 1981, EPA must submit every major proposed and final regulation along with a special regulatory analysis to the director of the Office of Management and Budget. The EPA must follow this procedure after meeting current requirements of examining regulatory flexibility and allowing other agencies, industries and citizens to comment. The OMB director can then force reconsideration of the regulation or delay its issuance simply by notifying EPA that it intends to file comments. This new procedure will give OMB a type of "super authority" over EPA, possibly in violation of the laws governing federal rulemaking.

The administration's budget shows that many critical decisions about EPA have already been made. The President seeks to rescind $1.7 billion from funds currently available to EPA while eliminating $3.9 billion from the budget recommended by the Carter administration. All of the funds scheduled for rescission and $3.7 billion of the cuts from the 1982 budget come from the construction grants program for sewage treatment. The administration proposes to restore $2.4 billion to next year's budget only if the Clean Water Act is amended to "target funding to those projects which most significantly improve the environment," according to the acting administrator. If all the changes are accepted, the construction grants program will have a budget of $2.3 billion in 1981 and $2.4 billion in 1982.

The construction grants program for treating waste water is one of the most important public works programs in history. There have been major problems; a GAO study found that 87 percent of the plants in a random sample violated the standards in their permits. But these and other costly problems are the results of abrupt changes in the program brought on by six administrations. The President's budget proposals risk causing more delays and waste rather than careful reform. Managing the reform of the program will be one of the most difficult tasks of the new administrator.

But reform in the grants program can be undone if deep cuts are made in research and development, public information, and technical assistance. The administration plans to turn over responsiblity for many aspects of the program to the states. This could have disastrous consequences. The GAO study found that many operational problems resulted from the failure to provide technical assistance to grantees. Unless new research is adequately funded (especially for alternative technologies) and the public is kept fully aware of existing problems and new developments, EPA will endanger both the future of the program and the $25 billion already invested in wastewater treatment plants.

For "Superfund," the Reagan budget for 1982 is $200 million, about $50 million less than the budget proposed by the Carter administration. EPA estimates that this will result in the clean-up of 30 fewer dumps and 20 fewer spills. This move is extremely shortsighted; once a dump or spill has entered a groundwater system or saturated the soil around a residential area, the costs of clean-up dramatically escalate. If this reduction is permitted, the EPA administrator will face complex and sensitive questions about the allocation of the agency's limited resources.

The committee should carefully examine Ms. Gorsuch's views on the Clean Air Act. With the Act coming up for reauthorization this year, Ms. Gorsuch's views and actions will be crucial to an informed public debate. The National Commission on Air Quality recently reported that the Act has not had a significant effect on national economic indicators. The public will be done a great disservice if discussion of the Act is dominated with distorted or erroneous stories from top officials about the law's impact on economic growth.

Ms. Gorsuch should also be questioned about the reorganization, which has already been ordered, in EPA's office of public information. In particular, the committee should investigate reports that the agency will eliminate documents that industry groups find unsettling.

In light of the serious issues now facing the EPA, Ms. Gorsuch's nomination does nothing to ease the growing doubts about the administration's commitment to protecting the environment. Mr. Chairman, your committee has a special responsibility not only to examine Ms. Gorsuch's views and background, but to determine whether she can preserve the agency's independence and enforcement authority. We do not believe she will.

Sincerely,

Ralph Nader

Ralph Nader

George Riley

George Riley

Senator **Stafford**. I am going to ask the final witnesses before the committee this afternoon to take a seat at the table all together, Although they are not necessarily a panel. They are Susan Kokinda, Washington representative, National Democratic Policy Committee, and Stanley Ezrol, Fusion Energy Foundation.

We welcome you today to our hearing. We almost have to insist that you each observe the 5-minute rule in summarizing your testimony, which will appear in the record in full.

Senator **Stafford**. Mrs. Kokinda, you may proceed.

STATEMENT OF SUSAN KOKINDA, WASHINGTON REPRESENTATIVE, NATIONAL DEMOCRATIC POLICY COMMITTEE

Mrs. **Kokinda**. I will summarize my remarks.

We appreciate the opportunity to be here.

The National Democratic Policy Committee is a multicandidate political action committee and think tank established last fall and associated with the efforts of Lyndon H. LaRouche, Jr., to provide national focus and policy for the progrowth majority of the Democratic Party.

The NDPC has adopted a policy of support for those nominations made by President Reagan which are in furtherance of the overwhelming mandate for growth delivered last November.

The nomination of Ann McGill Gorsuch as Administrator of the Environmental Protection Agency appears to fulfill that basic criterion, and, as such, we offer our support to this nomination.

I would like to just make one quick point in summarizing my statement, and that is that Mrs. Gorsuch has a very major responsibility in her position if confirmed as Administrator of the EPA. We have been concerned that there is a policy orientation continuing within various agencies and departments of the Reagan administration which is totally antithetical to what the President stands for and what we believe his mandate of last November is.

I am referring in particular to a report promulgated by the Carter administration called Global 2000. That report, which I imagine many people are familiar with, is sort of the umpteenth rewriting of a discredited thesis of over a century ago that we are running into a population crisis and environmental crisis, and as such we have to slow down, cut back and go backward.

There are still strong advocates of the Global 2000 perspective in a variety of departments and agencies in the administration. I am sure there are some in the EPA itself since one of the prior Administrators, Russell Train, continues to be an advocate of that.

The critical thing about the Global 2000 approach is that its adherents could certainly support the scientific and economic development because they believe it breeds population, and since population control must be the end of our policy, so must that economy and scientific activity be curtailed.

I would like to quote one advocate of this, Dean William May of the New York University Graduate School of Business and a participant in a National Audubon Society Conference which launched an organizing drive for Global 2000 in the private sector stated in a recent interview:

> It has to be recognized that there is a direct relationship between scientific progress, technological development and population growth. The Global 2000 report addresses the fact that the relationship must be drastically altered. Now we must be

careful to prevent scientific progress from automatically producing new surges of population growth.

We need a new sense of science. Our population policy must determine our science policy. The idea is to control and in some cases prevent the application of new technology. The core of U.S. strategic doctrine for the rest of the century is population control and science control.

I could come up with a dozen others of the same effect. I think it has to be recognized that the environmental problems in many respects has been used as an aspect of this overall approach; that there are elements in many departments still and agencies in the administration which advocate this orientation, which is antithetical to everything we have stood for and to what the President has stood for. As such, I think Mrs. Gorsuch has a higher responsibility in confronting herself and other people in critical departments such as agriculture and throughout the State Department and the administration, to deal with the fact we are dealing with a philosophy that is important and everything this country stands for, and I think she has a responsibility to deal with that both policywise and personnelwise to the extent that is active within the EPA.

I think at the same time EPA has got a second responsibility, not just to wipe away regulations, or put them in a more appropriate context, but EPA has a responsibility to look toward new technologies that will reduce the problems we may be facing here.

I think the EPA can play a role in redefining the task, and our environment will be protected by the application of more energy and high technology processes, and we hope the new administrator can meet that.

Thank you for your attention.

Senator **Stafford**. Thank you for your appearance here.

Now, Mr. Ezrol, we will be glad to hear from you.

STATEMENT OF STANLEY EZROL, FUSION ENERGY FOUNDATION

Mr. **Ezrol**. Thank you very much.

The Fusion Energy Foundation is the largest nonprofessional scientific organization in the United States. We have 17,000 members who publish a monthly magazine called Fusion, which has a monthly circulation of 200,000.

We support the appointment of Ann Gorsuch because she has demonstrated a willingness to stand up to the attacks of self-styled environmentalists against the necessary development of industry. She has shown at least on a number of occasions she could stand up to the environmentalists in Colorado, where that is not always the easiest thing to do, and we think it is fine if she is a friend of Jim Watts as well.

But what I would like to touch on is that I really think that a rethinking of the entire philosophy that the EPA has been based on has got to be accomplished during this administration. The basic point that has to be made, I think, is an important moral point, and that is that man is morally superior to nature, contrary to what a lot of people say; that man has a God-given right to use nature, to exploit nature, to modify nature, to do whatever we have got to do to meet our purposes. If you don't like the word "God," you can say it is a law of nature. But that is a fact of the matter.

As you know, the U.S. Constitution says that the Federal Government and Congress should provide for the public welfare, promote commerce, should promote science and the useful arts, but there is nothing at all in the Constitution that says that Congress has to protect trees, rivers, mountains or anything else like that.

I am not saying that we should destroy them, but if we want to protect them, we protect them for human purposes to provide for the welfare of the citizens, not for their own sake.

Now, it so happens, and maybe I seem to be stressing this point too much, but it so happens that leaders of the environmentalist movement don't believe what I just said, and I can support this if you are interested. They believe that man is either equivalent or inferior to nature, and therefore, somehow must adapt themselves to nature.

I can also support the fact that the principal author of the Global 2000 report prepared during the last administration believe that man is morally either equivalent or inferior to nature.

Now, I would like to spend just a little time to scientifically elaborate what a real approach to the environment is. The Fusion Energy Foundation participated in developing the model which has been the only successful one in predicting economic processes. It is based on three formulas which actually represent causal economic equations. First, the resource base is determined by the level of energy consumption mediated by technologies. Contrary to the insane ravings of the environmentalists, it is not true that technologies and consumption levels must be adjusted to fit a shrinking resource base. Historically, the way this works is simple. The fact of the matter is that it was always through technology we expanded the resource base. Land, which economists like to talk about as a resource, was never a resource until the human race developed agriculture. And that has changed as to the quality of technology, as it has changed.

Now we are developing fusion energy to redefine a new set of resources.

The second causal relationship is this: Capital investment in the form of machinery increases productivity of labor. Constraints on the use of high technology equipment decrease labor productivity and therefore must decrease our ability to improve the environment for progress. Anyone who tells you that you have got to move toward labor-intensive production and cut down on use of machinery is telling you that he is restricting our ability to provide a better environment.

Thirdly, increasing living standards causes technological advances; that is, technological advance is a creation of the human mind. The creative abilities of the human mind increases as the working day is shortened, nutrition is improved, housing is improved, and the level of culture available is increased, so that an increase in living standards is absolutely necessary to improve technologies for the environment.

What we are talking about is advocating the continuous expansion of human knowledge and human mastery over the universe.

These three causal relationships, I want to emphasize, do not represent opinions or a particular point of view, they represent mathematical relationships which have been programed as the successful computer model that I know about.

In summary, the Constitution is clear on what the EPA can be, and I hope that Mrs. Gorsuch is prepared to carry out her constitutional responsibilities, as I am sure you are.

Thank you very much for your attention.

Senator **Stafford**. Thank you very much, Mr. Ezrol.

If questions occur to members of the committee who necessarily had to leave, they will submit them to you in writing for immediate response on your part.

On behalf of the committee, I thank you both for appearing here today.

The committee is about to be recessed, but in the hope and expectation that we will have Mr. Hernandez' papers by 2 o'clock on Monday, Mr. Hernandez, we will plan to go ahead with your hearing at 2 o'clock, unless the papers are not here, and for those who were not here earlier, I pointed out the hearing will be held in our regular committee room up on the 4th floor, rather than down here.

So hopefully I will see you all at 2 o'clock on Monday, and in the meantime, the committee stands adjourned.

[Whereupon, at 4:15 p.m., the subcommittee was adjourned to reconvene at 2 p.m., Monday, May 4, 1981.]

[Statements and letters submitted for the record, responses to written questions, and Mrs. Gorsuch's biography follow:]

FRIENDS OF THE EARTH
530 7TH STREET, S.E., WASHINGTON, D.C. 20003
(202) 543-4312

STATEMENT OF
RAFE POMERANCE
PRESIDENT, FRIENDS OF THE EARTH
BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
CONCERNING THE NOMINATION OF
ANNE GORSUCH AS ADMINISTRATOR OF
THE ENVIRONMENTAL PROTECTION AGENCY

May 1, 1981

Mr. Chairman: I am Rafe Pomerance, President of Friends of the Earth. I would like to thank you for the opportunity to comment on the nomination of Ms. Anne Gorsuch to be Administrator of the Environmental Protection Agency.

EPA has a huge and critical mandate as a result of the statutes that this Committee and Congress have determined it must administer. EPA has the responsibility for protecting the health of the American people and for protecting many of the natural systems upon which humans and other species depend for their well being, and at times for their survival. The impact of industrialization, population growth and technology continue to have enormous impacts on these ecological systems. Thus EPA's frequent role, as mediator between these demands, is particularly important.

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The establishment and recent growth of EPA reflects society's awareness of the impact of the economic activity on the environment. Without regulation, these impacts cannot be controlled. In essence, many of the provisions of various environmental laws give human beings and the natural systems the right to be protected from activities of other human beings.

EPA is responsible for protecting public health and safety and for ensuring a clean environment in many ways -- from control of toxic chemicals, pesticides and herbicides, and air pollution, to hazardous waste dumps and noise pollution. EPA must also protect natural systems from demise, e.g. through section 404 of the Federal Water Pollution Control Act where it is instructed to protect the wetlands. Its scientific efforts must produce the data for setting air and water quality standards as well as solving the acid rain problem before thousands of lakes in North America die. EPA is charged with protecting the ozone layer. All of these activities affect hundreds of companies, dozens of industries and the way of life of every citizen of this country.

I believe it is important to mention such generalities in a hearing of this kind, because the person running EPA must have a strong commitment to the role which EPA plays in this country and the example which it sets for other nations around the globe. Any candidate to run the Agency ought to philosophically concur in the role which EPA must play as a federal enforcer of pollution control.

Major problems emerged that we think the committee should deal with thoroughly while it considers this nomination. Trends thus far in the administration are disturbing. The budget process is going to have an enormous impact on EPA. Given the proposed cuts, there may be threats to EPA's ability to continue to function as a capable institution. Over the next two or three years staffing cuts, the impact of inflation and a recently enlarged mandate will strain EPA tremendously. We urge the committee to examine the view of the nominee closely on the budgetary needs of the Agency and to learn of her intentions with regard to budget priorities.

William Drayton, former assistant Administrator of EPA for planning and management, has testified that under the administration budget proposals, the Agency's workforce will be cut by 1500 people which will mean that the Agency "will have the same staff level that it had before the increased workloads associated with the Clean Water and Clean Air Act amendments of 1977, the Toxic Substances Control Act, the safe drinking water legislation, the revised pesticide law, the Resource Conservation and Recovery Act to control hazardous wastes and the new Superfund law to clean up toxic spills and abandoned hazardous waste sites."

How will this administrator make the new programs work with so many fewer employees left to do a much larger job? The resources may not now be at EPA to fulfill its legislative mandate. Personnel policy may make it difficult to hire the technical and highly qualified people necessary to do the job well.

But is Ms. Gorsuch actually concerned with the impacts of the budget on EPA's ability to function? A story by the Knight News Service on March 29 indicated that the nominee was considering a plan to reduce the agency's staff by 20% over the next two years. In light of the tremendous mandate of the agency and its already strapped resources, we believe the nominee should give this committee a commitment to provide adequate personnel for the agency. We are also concerned about another proposal mentioned in the same story which claimed that she nominee favored "exiling most of the agency's 300 current top managers." The implication is that Gorsuch finds the top staff to be "suspect for their environmental ardor and their committment to current programs." If the plan is real, the most experienced and capable people would be eliminated, resulting in a devastating effect on the ongoing operation of the Agency.

We have already witnessed what has happened to the Council of Environmental Quality and to certain agencies within Interior. Is EPA's fate to be the same through a piecemeal reduction in force?

A small line item reduction in the Reagan budget proposal could have significant effects on the Agency's ability to carry out its mandate. Mr. Drayton's testimony to the House Budget Committee outlines many of the concerns we have, and I would like to submit it to the Committee for the record. In addition, I would like to outline some of the cuts already proposed by the Reagan Administration which we believe will have a very direct impact on EPS's effectiveness.

ENVIRONMENTAL PROTECTION AGENCY
BUDGET COMPARISONS
(Dollars in Thousands)

Program	FY 81	Reagan '82 Budget
Air	246,523.0	239,123.2
Water Quality	337,679.6	247,332.9
Drinking Water	82,893.0	87,666.1
Hazardous Waste	151,363.6	119,801.3
Pesticides	69,668.8	62,068.8
Radiation	17,187.9	12,887.8
Noise	13,045.0	2,271.4
Interdisciplinary	10,621.5	15,303.8
Toxic Substances	103,992.4	98,152.8
Energy	104,938.8	70,145.9
Management	217,225.0	236,693.0
U.S. Regulatory Council	2,500.0	-0-
SUBTOTAL	1,357,638.6	1,191,447.0
Construction Grants	2,304,837.0	-0-
SUBTOTAL	3,662,475.6	1,191,447.0
Superfund	68,000.0	200,000.0
GRAND TOTAL	3,730,475.6	1,391,447.0

EPA Air Budget

At a time when research standards at EPA are being questioned and additonal resources are being required, the Reagan Administration is opting for a much reduced Research and Development program. The Agency is now in the process of reviewing ambiant air quality standards; industry spokespeople are highly critical of EPA's ability to gather adequate data to support the standards. Their message: if EPA air standards are to be sustained legally and politically, EPA must increase its research program, not reduce it. However, the Reagan budget reduces research by 3 million for 1982.

Additional research monies in the Energy Program were to be devoted to effects of air pollution caused by synthetic fuel development and fuel combustion process emissions. Total reductions: 15 million dollars, while simultaneously, the budget increased the money available for synthetic fuel permitting.

Other Energy Program cuts bring the total to $35 million effecting the Great Lakes Research Program, Offshore Oil and Gas Program, an assessment of impacts from wastes from industrial boilers and waste from coal and oil shale mining.

EPA Water Quality Budget

1. Effluent Guidelines. The proposed $12.1 million reduction in the standard-setting program for toxic water pollutants assumes that the major regulatory development portion of the program will be completed by 1982. But the program is far behind schedule, having set standards for only one of 24 industries. EPA has had chronic difficulties meeting legislative and court-mandated deadlines for effluent guideline promulgation. The Agency's own estimates of how long promulgation will take are always overly optimistic. Even if EPA adheres to the FY 81 schedule, almost half of the priority regulations will have to

be promulgated during 1982. Failure to promulgate these regulations will mean toxics control requirements cannot be added to many permits which will be reviewed during 1982, effectively postponing them until the next review in five years. Thus, cutting the FY 82 resources for this program will postpone control of toxic water pollutants indefinetely.

2. State Grants. The proposed budget keeps state grants for water quality management at the FY 81 level even though the states are expected to assume new and critical implementation activities, including monitoring for toxic water pollutants, dredge and fill, water quality standards, and second round permitting and enforcement during FY 82. Thus, the inflation factor would mean the state grant program would be reduced in purchasing power by 10-15 percent. The Reagan Administration cannot expect to transfer responsibilities to the states and have them competently carried out without increased funding support. These expanded state activities necessitate at a minimum $2.1 million of additional federal assistance to the states.

EPA Drinking Water Budget

The Reagan Budget virtually eliminates an effort initiated in 1980 to develop and implement a comprehensive groundwater protection strategy. This strategy has been under development for more than a year and has included extensive public hearings and consultation with all levels of state and local government. Important progress toward preventing the loss of many aquifers due to contamination is dependent upon a much better coordinated effort at both the federal and state level. Since more than 50 percent of the population is dependent upon groundwater for drinking supplies, the public health benefits are enormous. Over 1,363 wells supplying drinking water to over 500,000 people have been closed in recent years due to ground water contamination. It is recommended that $7 million removed from the Carter '82 budget for groundwater protection strategy implementation be restored. Much of this money was targeted for grants to enable states to implement groundwater protection strategies.

Superfund

EPA has identified 2000 sites which contain toxic materials hazardous to public health. The cost of containing the contents at each site is estimated to average $3.6 million per site . The Reagan Administration's budget for 1981 and 82 represent a $60 million reduction in resources and a staff reduction of 132 work years from the previous Administration's budget. With the severe ramifications to public health, the Reagan budget will not be adequate to do the job.

Who Will Run EPA

Aside from the budgeting issues raised above, we are quite curious and somewhat alarmed by the current administration's plan for managing its natural resource agencies.

Clearly, the issue of exactly what position Ms. Gorsuch will adopt on such major issues as the reauthorization of the Clean Air and Clean Water Acts is of great improtance to FOE. Although we will not spend the committee's time speculating on what those positions will be, we do want to mention one extremely troublesome remark attributed to Ms. Gorsuch. According to a February 31 article in the Washington Post, Gorsuch said she "absolutely" thinks cost benefit analysis should apply to the setting of standards for pollution emissions. We believe that the fact that the standards are based on human health and welfare is esential to the statutes. Abandoning this priciple represents an undermining of the fundamental goals and principles of the major pollution control laws.

To date, the candidate has chosen to work under the roof of the Department of Interior -- not EPA where she might have been briefed by the EPA staff on some of the most pressing issues. Rather, she was housed at Interior, where little expertise exists on the pollution laws.

Under new procedures recently adopted, EPA must propose a regulation and then negotiate the final language of the regulation with OMB. This process does not appear to us to be balanced as the public can be completely closed out of this most crucial stage of the negotiations. It also means that the Agency's power could shift to elsewhere in the executive branch. What kind of balanced process is the nominee willing to ensure?

Secretary Watt is chair of a cabinet level council on the Environment and Natural Resources. EPA is currently not represented on this council, although issues within its jurisdiction can clearly be raised in the context of the group. We believe it is in this committee's best interest to determine how this council will operate. We understand that Mr. Watt is presently working on the Administration's position on the Clean Air Act reauthorization. Given this information we wonder who will actually make decisions for EPA?

Dealing with Emerging Problems

The rhetoric of the day concerning environmental policy tends to be much more focused on trying to deal with the costs of regulatory programs rather than growing and profound environmental problems. Attention must be paid to both. An administrator of EPA cannot ignore the future. Just as the problems of hazardous wastes dumps surfaced quickly, other dramatic problems will also arise. Acid rain now threatens hundreds if not thousands of lakes in North America. Yet in a Washington Post interview the nominee was quoted as saying that the causes of acid rain are "largely speculation."

Acid rain is an urgent problem high on the U.S.- Canadian agenda. We believe that the adminstrator of EPA must be willing to take a leading role in getting the U.S. government to face up to this problem.

Other emerging problems EPA faces include buildup of carbon dioxide in the atmosphere and the depletion of groundwater supplies in this country. The administrator of EPA must be prepared to take a leading role in bringing these problems to the public and ensuring that action is taken to remedy them.

Finally, we feel obligated to question Ms. Gorsuch concerning her previous experience. In Colorado, Ms. Gorsuch had no experience managing a large and complicated agency. Now she will be expected to administor an agency of over 10,000 people. Gorsuch's exposure to environmental issues has been limited. As a legislator, she delved into only two environmental issues, spending most of her time on the criminal code. In our estimation her lack of experience forces us to question her ability to effectively operate such a large federal agency.

In conclusion, the Committee should receive assurances from the nominee that she will

- -- defend adequate funding for EPA during her tenure so that it can administer the many laws under its jurisdiction;
- -- ensure that EPA's mandate will not be stifled by the regulatory review process and the Cabinet level task force on natural resrouces;
- -- take a leadership role in addressing emerging environmental problems.

Unless the Committee has been completely satisfied on these questions her nomination should not be approved.

NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036 202—797-6800

TESTIMONY OF RICHARD C. OSHLO

Mr. Chairman and members of the Environment and Public Works Committee, I want to thank you for this opportunity to testify on behalf of the National Wildlife Federation. I am Richard Oshlo, Legislative Representative for the Toxics and Pollution Team of the National Wildlife Federation, which is the nation's largest conservation organization.

The nomination of Ms. Anne Gorsuch to be Administrator of the Environmental Protection Agency (EPA) is of grave concern to the National Wildlife Federation and many other conservation organizations. This is no small town patronage position, but, rather, is a post of critical national importance. The Administrator's decisions have significant implications for every state, for the health and welfare of every citizen, and for the business sector.

There are no documented facts, as far as we can determine, which demean Ms. Gorsuch's competence, integrity, or character, and we do not disagree with the general practice of having the President nominate individuals who share his philosophy of government or environmental views.

This should not be construed, however, as an endorsement of Ms. Gorsuch's nomination or her stated policies. We are very deeply concerned about the role she will play at the EPA. There are many questions about her effectiveness and leadership as Administrator of the Environmental Protection Agency which we believe should be answered. These questions go to the very heart of EPA's independent status and of who will be making our environmental policy.

The Environmental Protection Agency was charged, when it was created in 1970, by the Congress to protect our public health and enhance our environment. It was established as an independent agency to serve as the public's guardian for a livable environment.

It has a highly technical and rigorous regulatory role, and the Administrator must exercise strong leadership and be able and willing to balance many competing interests. That person must be independent enough to discern the public interest from among a myriad of special interests, and enforce regulations even vis-a-vis other agencies.

Mr. Chairman, recent newspaper reports seem to indicate that our country's environmental policies and programs may no longer be coming from the EPA. Let me give you a couple of examples of what I mean. In February 1981, the Reagan Administration announced a so-called "hit list" of important environmental, health, and safety regulations for revision or rescission. These regulations were based on an earlier memorandum prepared by the Director of the Office of Management and Budget for the President. In addition, the Reagan Administration has issued as executive order centralizing regulatory policy making under the Task Force on Regulatory Relief, which is headed by Vice President Bush.

The Environmental Protection Agency was never meant to be an extension of the OMB or the Department of the Interior, and the EPA Administrator is expected to fight within the Administration for the Agency's statutory programs. Who will run this Agency? Who is going to review EPA's regulations? Will it be the EPA Administrator or the Secretary of the Interior?

Since its establishment, the Environmental Protection Agency has been the focus of occasional external interferences, and the Congress, including members of this committee, have consistently underscored the need for an independent agency. On Several occasions various sub-cabinet-level arrangements have been made in the past for receiving EPA's proposed regulations or for assuring an examination of these regulations by the White House economic and budget officials before their promulgation. In these instances, the Congress, often under the leadership of the Committee on Environment and Public Works, made sure that the integrity of the Agency's mission was not impaired or that its Congressionally established authority was not administratively eroded. Though our environmental regulations should be fair and unburdensome, we have to assure that their public benefits not be ignored or diminshed by unnecessary outside reviews.

There has been no formal reorganization of EPA's statutorily-defined functions and Members of this Committee should be interested in any possible erosion of EPA's designated authority. They should determine what will be Ms. Gorsuch's role as Administrator. Will she be committed enough to the purpose of the Agency to assure that environmental decisions are made at EPA? Will she actively enforce legislatively-mandated regulations? Will Ms. Gorsuch develop,for instance, the recommendations for reauthorizing the Clean Air and Water Acts? Or will that responsibility be abdicated to OMB, the Department of the Interior or some other cabinet-level body? If These questions are not clearly answered, it will be difficult to determine, from a legal viewpoint, who shall be the defendent in any legal challenges to the regulations or administrative actions.

Mr. Chairman, we have made great strides in improving our air and water quality, halting the spread of toxic substances, and controlling the haphazard discharge of solid wastes. The progress we have made in the 1970's will face serious challenges in this decade. The Senate Environment and Public Works Committee has created the impetus and framework for this significant progress, and we cannot afford to see an administrative erosion of these great steps forward or missed opportunities in the future.

It is not the Administrator's responsibility or authority to legislate changes. Will Ms. Gorsuch implement the environmental programs passed by the Congress or will she open the agency to external interferences? The answer to this question must be examined.

Mr. Chairman, that concludes my statement. I will be happy to answer any questions or provide any further information. Thank you.

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STATEMENT
OF
ELIZABETH A. DAVENPORT
COORDINATOR
ENVIRONMENTAL ACTION, INC.
before the
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
REGARDING THE CONFIRMATION OF
MS. ANNE M. GORSUCH
for
ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY
May 1, 1981

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Mr. Chairman and members of the committee. I am Elizabeth A. Davenport, Coordinator of Environmental Action, Inc. Environmental Action organized the original Earth Day in 1970 and has since been active on a wide variety of environmental issues. We appreciate the opportunity to present our views on the nomination of Ms. Anne Gorsuch to be Administrator of the Environmental Protection Agency.

Environmental Action opposes the confirmation of Ms. Gorsuch as Environmental Protection Agency (EPA) Administrator. We believe that she is an administrative novice and lacks necessary technical expertise. The EPA Administrator has great discretion in implementing the laws passed by Congress. Our organization fears that, if someone with Ms. Gorsuch's weak environmental credentials is confirmed, EPA will be unable to carry out its mandate. This could jeopardize environmental quality and the health and well-being of millions of Americans.

Managing the Environmental Protection Agency is a complex and difficult task. EPA is often caught in a double bind - too many problems and too few resources. Congress - and this committee - have given EPA a broad mandate under a number of environmental laws passed during the past 10 years. Rather than grapple with many of the finer points, Congress has often delegated to EPA the enormous - and delicate - task of drafting the regulations to carry out these laws.

But EPA has rarely received adequate resources to implement these Congressional mandates. Traditionally, Administration budget requests and Congressional appropriations have severely underestimated the amount of staff and money needed to do the job.

Running the agency under such circumstances is difficult enough. Now the budgets of a number of critical EPA programs are being stretched even further. For example, Superfund legislation was passed by this committee and enacted into law in December, 1980. Choosing which hazardous waste sites will be given priority attention will be an extremely complicated task, requiring a detailed set of criteria and a ranking system. Congress left it up to a National Response Team to draft a National Contingency Plan to implement Superfund. Yet the National Response Team has proposed only the vaguest of criteria to determine when, where and how the dumps will be cleaned up. And the Superfund budget is slashed a drastic $60 million in the Reagan Administration's budget.

No one is opposed to eliminating waste or improving the efficiency of EPA or any federal agency. In fact, environmentalists recently proposed a "counter-budget" which suggests ways in which the federal budget can be cut while important environmental programs are preserved.

Some of the most delicate and important compromises on environmental regulations have been negotiated by EPA. The agency will increasingly be in this kind of position as Congress reconsiders the Clean Air Act and other major environmental laws. During this process, EPA will need strong, knowledgeable, and respected leadership, a top-notch administrator able to recognize tough tradeoffs and make decisions in the best interests of the American people.

We seriously question whether Ms. Gorsuch is the right person for the job. While we have no doubts that she is very intelligent, her background in environmental matters is far from solid. She has been an attorney for the Mountain Bell Telephone Company. She has worked on juvenile court cases and welfare support cases as an assistant district attorney in Jefferson County, Colorado and as a deputy district attorney in Denver. As a Colorado state legislator, she chaired the State Affairs Committee and was known primarily for her position on mandatory sentencing of felons.

A great many of the environmental laws that passed through this committee contain no mention of cost/benefit analysis and hold environmental protection paramount. President Reagan's recent Executive Order, however, clearly states that the benefits of any regulation proposed by his Administration must outweigh the costs. Ms. Gorsuch herself recently told The Washington Post that she "absolutely" thinks cost/benefit analysis should apply to standards for pollution emissions.

But the current state of the art of cost/benefit analysis is woefully inadequate and does not fairly weigh the costs and the benefits of environmental regulations. Typically, the benefits are indirect, widely distributed and consequently difficult to quantify. On the other hand, the costs of regulations are relatively direct and easily quantified. The result is that the easily obtainable costs are magnified in these analyses, while the benefits are grossly underestimated. We believe that if all the true costs and benefits could be weighed equally, environmental regulations would emerge as clear winners.

When the Environmental Protection Agency was created through President Nixon's Executive Order on July 9, 1970, it was clear that the agency's mission was to establish and enforce environmental protection standards and conduct research on the adverse effects of pollution and the methods and equipment for controlling it. It was created as an independent agency to remove the inherent conflicts between environmental protection and existing agencies' programs.

The need for a strong, independent Environmental Protection Agency has not changed in the past 10 years. In fact, in an Administration with powerful anti-environmental voices, the need for a strong EPA Administrator is even greater. But we believe that confirmation of Ms. Gorsuch would lead to an inevitable erosion of EPA's independence and effectiveness. It would threaten proper implementation of the environmental laws of this country - thereby frustrating both the intention of Congress and the hopes of the American public, which wants environmental protection.

Two people familiar with her environmental record in the Colorado legislature have also raised questions about her qualifications for the EPA Administratorship. Frank Traylor, director of the Colorado Health Department, who dealt with Ms. Gorsuch on hazardous waste issues, described her as "a very smart person." But he added that she has "no administrative experience. If Reagan wants to cut environmental regulations back, that's what her agenda will be." Reed Kelley, legislative representative for the Colorado Open Space Council, a state environmental group, said,"We're very concerned that she has such a negative attitude toward the environmental program."

Opposition to Ms. Gorsuch's nomination has come from such varied quarters as The Washington Post, the American Public Health Association and numerous environmental groups.

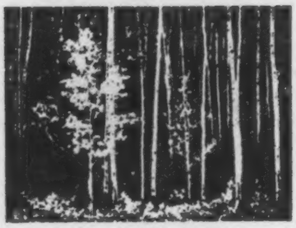
But perhaps most disturbing is the fact that so little is known about Ms. Gorsuch's background, in spite of the fact that her nomination was announced by the Reagan Administration 10 weeks ago. The EPA Administrator job is certainly far too important for the American people to entrust it to an unknown. If our democratic system of government is to function effectively, any Administration must be held accountable for its appointments to key government positions.

It is clear that the American public is demanding more environmental protection, even at a cost. A recent ABC/Louis Harris poll, for instance, revealed that 93.6 percent of Americans felt that federal standards prohibiting dumping of toxic wastes should be made more strict than they are now. In addition, 86 percent of Americans felt that toxic chemical dumps and spills should be given a very high priority for federal action. Given Ms. Gorsuch's lack of regulatory expertise, concerned Americans have little reason to believe that their wishes will be acted upon. Citizens of this country deserve far better.

At a time when Americans are extremely skeptical of the ability of government to do anything, the confirmation of a poorly qualified Administrator of EPA can only aggravate such cynicism.

We urge the committee to reject this nomination.

Thank you.



by Ansel Adams in This is the American Earth

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STATEMENT OF
A. BLAKEMAN EARLY
WASHINGTON REPRESENTATIVE, SIERRA CLUB
BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
CONCERNING THE NOMINATION OF
ANNE GORSUCH AS ADMINISTATOR OF
THE ENVIRONMENTAL PROTECTION AGENCY

May 1, 1981

Mr. Chairman, and members of the Committee,

It is a pleasure for me to appear before the Environment and Public Works Committee to discuss the nomination of Ms. Anne Gorsuch as Administrator of the Environmental Protection Agency. While these nomination hearings will primarily focus on the qualifications of the nominee, they also provide a good opportunity for the Committee to clarify how critical decisions congressionally delegated to the Administrator of EPA are going to be made, and to ensure that they will be made in a fair and lawful fashion. Such a review is particularly important in light of the major shifts of emphasis within the Reagan Administration directed toward regulatory reform. In addition, it is becoming increasingly obvious as the Reagan Administration begins to organize itself that the locus of power is shifting away from the Environmental Protection Agency, toward the Office of Management and Budget and the Secretary of Interior. The inordinate delay in even nominating a candidate for EPA Administrator is itself an indicator of that fact. The Secretary of Interior, James Watt, now chairs a Task Force on Natural Resources and the Environment which will be the major policy-making body for the Administration on issues in its jurisdictional area. The Office of Management and Budget's own Office of Regulatory and Information Policy has prepared a 43-page critique of EPA which recommends major program revisions and reviews. Several of its recommendations have already been adopted by yet another entity within the Administration which will have a major impact on EPA's programs--the Regulatory Relief Task Force, chaired by Vice President George Bush. So we see that we have diverse entities within the Reagan Administration which will be seeking to set and change EPA policies. These policies deal with the implementation of legislation written by this Committee over the past decade.

This Committee meticulously and laboriously crafted legislation which did reflect concerns for costs and weighed them with the need to protect public health and the environment. For instance, no one can argue that inflation and the economy were not major issues in 1977 when both the Clean Air Act and the Clean Water Act were revised. We urge the Committee to examine during these hearings whether the balance which has been struck in all these important pieces of legislation may be changed by means of a closed, administrative process which does not involve a rigorous review or a fair hearing of all points of view. Our concerns about this process lie in two areas. First, whether the attitudes of Ms. Gorsuch, who endorses broad use of cost-benefit analysis in EPA rulemaking may cause her to introduce costs as a factor in decisions where they are currently prohibited by law. Second, whether such decisions will be substantially taken out of Ms. Gorsuch's hands and made by others within the Amdinistration, and dictated to her by means of ex parte communications not subject to public scrutiny.

In a newspaper interview, Ms. Gorsuch was quoted as favoring a greater application of cost-benefit analysis in the setting of standards under the Clean Air Act. As the members of this Committee know, the Clean Air Act contains provisions relating to the establishment of national ambient air quality standards which do not permit the consideration of costs in their assessment. This provision, which no doubt will be the subject of significant discussions during the Clean Air Act reauthorization process in this Congress, was specifically designed by this Committee to establish a standard of air which is healthy for all Americans, even those who may have a particular vulnerability to air pollution. However, costs are considered elsewhere in the Act in the determination of what technologies are applied and how quickly standards and other requirements are achieved. Ms. Gorsuch may feel that the use of cost-benefit analysis in the setting of national ambient air quality standards is a superior approach. We would hope that this Committee would make it clear that such an approach is unacceptable--and that she must respect the limitations to the use of this technique that are provided in the law.

Of equal if not greater concern besides the personal predilections Ms. Gorsuch may have in making decisions bestowed on her by environmental statutes are the predilections of those elsewhere in the Administration who are part of the emerging decision-making structure that will decide environmental and natural resource issues. At issue here is the process by which Executive Branch agencies and individuals influence rulemaking decisions which are delegated to EPA and which should be open to public scrutiny. In the past, this Committee has taken a strong stand against back room influence wielded by the White House or other Executive Branch agencies. As long ago as 1972, this Committee held extensive hearings to investigate the influence of the "Quality of Life Review" administered by the Office of Management and Budget on the first major program regulations promulgated by EPA under the 1970 Clean Air Act. Indeed, in the 1977 Clean Air Act Amendments, this Committee included an amendment to Section 307, requiring public disclosure of communications between EPA and other Executive Branch agencies. Not only does this provision prohibit EPA from relying upon Executive Branch communications which have not been exposed to public scrutiny, but comments arising from White House review procedures are not to be considered a legitimate basis for an EPA rule, even if properly docketed, unless such comments concern issues already raised by members of the public.

In 1979, this Committee held hearings reviewing similar abuses which took place under the Carter Administration. Members of the Council on Wage and Price Stability, the President's Council of Economic Advisers and the Regulatory Analysis Review Group often communicated with the Administrator of EPA after the close of the public record, urging the consideration of economic factors in the setting of regulations which are not even legal. It was learned that during these shadow rule-making processes, often the review which precipitated illegal communications with EPA was conducted by mid-level bureaucrats, after only a very shallow examination of the relevant issues under consideration. Members of this Committee, including the present chairman, expressed significant concern about the situation at that time.

In discussing interventions in rulemaking by the President's economic advisers, Senator Stafford said:

> They would like to determine the outcome of regulations concerning strip mining, ozone in the atmosphere, the disposal of hazardous waste and probably dozens of other fields. But in their decisions, these economists apparently do not care to be troubled with the responsibilities which accompany the authority. They seem to regard the requirements of law as mere niceties, which they can ignore. Specifically, they keep little or no records of their contacts with vested interests who are vitally concerned with the outcome of proposed regulations. They seem insensitive to the requirements of the law regarding ex parte contacts. And, they seem blithely ignorant of the requirements of the specific environmental statutes which they are reviewing.

EPA was designed an an independent agency when it was first created by a Congressionally approved reorganization plan in 1970. Almost every major statute it administers delegates the decisional authority exclusively to the Administrator, unlike some energy and other legislation which provide for Presidential review. Furthermore, the courts have consistently held that where a decision is committed to the discretion of an agency official by Congress, the President has no authority to dictate the outcome of that decision. I include as an appendix to my testimony a memorandum prepared by the Environmental Defense Fund which discusses these points.

The public policy rationale for maintaining EPA independence is clear. The decisions regarding how to protect public health and the environment are complex ones. The Administrator must balance the need to take preventive action to protect health and environment against scientific and technological uncertainties. It is important that this balancing be done in a fair, thorough and non-political fashion. The Administrator necessarily must develop a level of expertise unmatched within the Executive Branch and which enables the Administrator to be uniquely qualified to make these decisions. We feel it is paramount that the Administrator's independence be protected from undue political influence.

The situation under the new Administration indicates that history may well repeat itself. As we all know, President Reagan has pledged to reduce the cost of government, and there are numerous forces within the Administration dedicated to attaining that objective. It is not at all clear that these entities will respect the independent status which EPA should enjoy in decision-making and not seek to influence EPA decisions without the benefit of public scrutiny of their views. The most obvious of these entities within the Administration is the Natural Resources Environmental Task Force, chaired by Secretary of Interior James Watt. Secretary Watt is reported to be a close personal friend of Ms. Gorsuch; they worked together closely in Colorado, and during the period prior to Ms. Gorsuch's nomination, she has in fact been occupying offices in the Office of the Secretary of Interior. The Natural Resources and Environment Task Force is reported to be the principal policy-making body on all natural resource and environment issues, including those under the EPA's jurisdiction. Mr. Watt's involvement in EPA affairs includes reportedly interviewing all candidates for Assistant Administrator positions within EPA. Clearly, the question arises whether Mr. Watt and the Task Force he heads will press for the adoption of policies by EPA in its rulemaking in a manner which fails to recognize the independent status of EPA rulemaking and the strong need to subject all recommended rules or changes to rules to public scrutiny in a timely manner.

The second entity of concern is the Task Force on Regulatory Relief. This Task Force is mandated to carry out the President's Executive Order 12291 to ensure that new regulations and existing regulations maximize the net benefits to society and select the alternative involving the least net cost to society. While this Executive Order is to apply "to the extent permitted by law," it is important that the legality of this requirement as specifically applied to EPA rulemakings be subject to public scrutiny and debate. In addition, the overall mandate imposed by the Executive Order and the specific mandates which will be imposed by the Regulatory Relief Task Force itself impose substantial burdens on EPA to gather data, while EPA is simultaneously undergoing alarming cuts in its personnel and budget levels. Finally, reviews by the Task Force will impose substantial delays in violation of at least the spirit, if not the letter, of legal requirements imposed both by Congress and courts.

Finally, the Office of Regulatory and Information Policy, which is part of the Office of Management and Budget, appears to be a major influence on EPA policy and rulemaking. An internal OMB document which has been the subject of articles in the press, recommends a major effort to scale back EPA rules across virtually every program area. Some of these recommendations in our view would be illegal. For instance, it is apparently OMB's position that EPA may consider costs when setting the statutory margin of safety under the national ambient air quality standards. We find no support in either the statutory language or the legislative history for this point of view. OMB will seek a major review of hazardous waste regulations under the Resource Conservation Recovery Act, as well as a re-evaluation of effluent limitation guidelines and pre-treatment requirements to control "priority" toxic pollutants under the Clean Water Act. The regulations under both these programs are substantially behind in meeting the statutory mandates devised by this Committee. In addition, OMB has already reviewed both these regulatory programs in the past. It is apparent that OMB will continue to delay and re-review regulations until its viewpoint is completely accepted, regardless of the regulatory promulgation schedule mandated by Congress. Of course, the OMB has become a major target for industry suggestions to weaken EPA's rules and authorities. Just how all these suggestions will be transmitted to EPA and how OMB will seek to bend EPA to its point of view is largely open to question at this time.

In order for the Committee to ensure that history does not repeat itself, we think it is important that the Committee obtain a commitment from Ms. Gorsuch that she will limit the manner in which Presidential advisers seek to influence EPA rulemaking actions, using the following guidelines. Neither the President nor his advisers have the authority to dictate the outcome of EPA rulemaking actions, and are therefore subject to legal constraints governing the participation of members of the public in the rulemaking process. It is therefore highly appropriate for the President or his advisers to submit comments and propose rules and participate fully in the rulemaking process, so that the interaction of varying points of view may provide a thorough record on which Ms. Gorsuch can base her ultimate decision, and which would subsequently be available for judicial review. However, where the President or his staff meet with EPA officials during the course of rulemaking, a summary of the points made at such meeting should be made and included in the public record. Such meetings or other communications should cease after the close of the public comment period. Indeed, there is a substantial legal argument that the Administrative Procedure

Act would require such post-record comments to be subject to the public comment period, particularly if such communications involve new material which had not previously appeared in the record, or new analysis of old material. Otherwise, a person may be prevented from raising an issue in litigation which had not previously been raised in their public comments on the proposed rule.

We feel that it is essential that Ms. Gorsuch commit herself to maintaining the independent status EPA has. Through the adoption of these guidelines for Executive Branch intervention in EPA rulemaking processes, Ms. Gorsuch can ensure that the concerns for the impact of EPA rules on the economy are integrated with the mandates EPA has to protect public health and the environment.

We feel compelled to raise one last concern which is related to the issue of maintaining EPA's independence that may be directly affected by the qualifications of the nominee Ms. Gorsuch. As other witnesses have noted, Ms. Gorsuch has little if any experience administering large agencies. She will now be in charge of one containing more than 9,000 employees. This agency is mandated to carry out an ambitious number of regulatory activities, all of which require a broad variety of technical, scientific, and legal skills. We are very concerned that the skills which the EPA has built up over the past decade and which are crucial to the implementation of its mandate may be lost either through voluntary or involuntary departure of personnel from the agency. While the budget and personnel cuts proposed by the President for FY 82 will be crippling enough, we were shocked to read that Ms. Gorsuch had publicly proposed transferring EPA's top 300 managers to field positions in order to get some "new blood" into the agency. We assume this proposal is attributable to her lack of administrative experience in general and EPA personnel in particular. In our view, the combination of the budget cuts and a massive reorganization of this type would be so crippling to EPA that we could expect little effective action on virtually all EPA programs for at least 18 months. The loss of key expertise would be enormous and damage to overall morale would be profound. We urge the Committee to obtain assurances from Ms. Gorsuch that she will not implement such a major reorganization.

In conclusion, we have outlined our concerns regarding whether the legal integrity of the laws EPA administers, and the independence of EPA as an agency with very significant and specific responsibilities will be maintained under the direction of Ms. Gorsuch. If the Committee cannot clarify that these laws will not be compromised administratively, and that Ms. Gorsuch will defend EPA's status as an independent agency and assert her independence and willingness to make the decisions entrusted to her fairly and independently, then we urge the Committee not to confirm her nomination as Administrator.

PRESENTED ON BEHALF OF:
Environmental Action
Natural Resources Defense Council
Sierra Club

Environmental
Defense
Fund

1525 18th Street, NW, Washington, D.C. 20036 • 202/833-1484

September 5, 1978

MEMORANDUM

TO: Addressees

FROM: Robert Rauch

RE: Legal restrictions on Presidential Interference in EPA Rulemaking

I. Introduction

The purpose of this memorandum is to review existing legal restraints on presidential interference in EPA rulemaking. The recent activities of the Regulatory Analysis Review Group have raised serious questions as to whether presidential advisors have exceeded their legal authority in attempting to influence rulemaking decisions of the Environmental Protection Agency and the Occupational Safety and Health Administration. Members of the Regulatory Analysis Review Group have indicated a willingness to review these activities and establish guidelines for presidential involvement in rulemaking activities. This memo is designed to further that process.

Specifically, the memorandum will consider (1) the place of EPA in the structure of the Executive Branch; (2) the nature and extent of presidential authority over the Administrator; and (3) the application of the Administrative Procedure Act and recent court decisions dealing with ex parte contacts to communications between the President (and his aides)

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and EPA. The memo is divided into two broad sections, each of which is designed to address a specific question. The first question is: Does the President or his immediate staff have the authority to direct the Administrator of EPA to take a specific course of action in a rulemaking proceeding? The second question is: If the President's authority falls short of this, under what conditions can the President or his aides attempt to influence EPA rulemaking decisions?

II. Presidential Authority Over EPA Rulemaking Decisions

A. Congress has given the Administrator of EPA exclusive authority under the various environmental statutes to promulgate rules, and there is nothing in either these statutes or other statutes governing the rulemaking process which gives the President the authority to specify the outcome of EPA rulemaking action.

1. EPA's position in the Executive Branch

The Environmental Protection Agency was created in 1970 pursuant to Reorganization Plan No. 3, submitted by President Nixon to the Congress on July 9th of that year. 1/ In addition to creating a separate, independent executive agency, the plan specifically transferred to the Administrator of the new agency all functions vested by law in various departments of the government which had previously been given the responsibility for administering existing environmental quality statutes. For example, the plan transferred to the Administrator "all functions vested in the Secretary of the Interior or the Department of the Interior by the Federal Water Pollution Control Act or by

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1. See Reorganization Plan No. 3, reprinted in U.S. Code Cong. & Ad. News, Vol. 2, 93d Cong., 2d Sess. (1970) at 6322.

provisions of law amendatory or supplementary thereof." 2/ Similar provision was made for the transfer of the legislative authority of the Department of Agriculture over pesticides and that of the Department of Health, Education and Welfare over air pollution. Significantly, the Reorganization Plan also provided that:

> The transfers to the Administrator made by this section shall be deemed to include the transfer of (1) authority, provided by law, to prescribe regulations relating primarily to the transferred functions. . . . 3/

From the foregoing, it should be clear that the original Reorganization Plan which established EPA also gave the Administrator exclusive authority to prescribe regulations required by the legislative authorities which he inherited. Moreover, there is evidence in the message submitted by the President which accompanied the Reorganization Plan that the President fully recognized the importance of preserving the Administrator's independence. In his message, President Nixon stated:

> In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another

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2. Id. at 6323.

3. Id. at 6324.

> of the existing departments and agencies are compelling.
>
> In the first place, almost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission--such as resource development, transportation, health, defense, urban growth or agriculture--which necessarily affects its own view of environmental questions.
>
> In the second place, if the critical standard setting functions were centralized within any one existing department, it would require that department constantly to make decisions affecting other departments--in which, whether fairly or unfairly, its own objectivity as an impartial arbiter could be called into question.
>
> Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed. That agency would, of course, work closely with and draw upon the expertise and assistance of other agencies having experience in the environmental area. 4 /

In short, although EPA was not set up by statute, the President recognized in his recommendation, that a strong, independent agency was essential to ensure impartial and objective decisions on very controversial issues. The President recognized that establishing an independent agency presented various problems, one of which was less coordination and control over its decisions by the White House and other elements of the Executive Branch. However, he clearly indicated that he was willing to accept this drawback because of the need to shield the Administrator from the conflicting pressures which would have been generated had EPA been placed in a larger department with different sets of priorities. Furthermore, this assurance of EPA's independence undoubtedly played a critical role in persuading Congress not

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4. Id. at 6323 (emphasis added).

to establish an independent agency by statute.

This conclusion is supported by numerous subsequent legislative enactments which have placed exclusive responsibility for various rulemaking actions with the Administrator. For example, the 1970 Amendments to the Clean Air Act gave the Administrator full responsibility for establishing, among other things, national ambient air quality standards. 5/ The 1972 Amendments to the Federal Water Pollution Control Act followed a similar pattern. The amendments give the Administrator, and no one else, exclusive authority to make hundreds of specific rulemaking decisions. 6/ The Congress has followed the same pattern in enacting the Toxic Substances Control Act, the Safe Drinking Water Act, and the Resource Recovery and Conservation Act. Once again, all of these Acts provide the Administrator with exclusive authority to make final rulemaking decisions. Nowhere in any of these statutes is the President or his immediate advisors given authority to dictate the outcome of specific rulemaking activities.

Indeed, there is persuasive evidence from other statutes, that where Congress intended the President or other elements of the Executive Branch to participate in regulatory decisions, it has explicitly provided for such action by statute. For example, the President is given explicit authority to review decisions of the Federal Energy Administration (now part of

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5. See §109 of the Clean Air Act Amendments of 1970.

6. See Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1251 et seq.

the Department of Energy) which exempt specific petroleum products from regulation. 7/ Similarly, the Federal Energy Regulatory Commission's authority to approve the route of the projected gas pipeline from Prudhoe Bay in Alaska across Canada to other United States terminals is also subject to presidential review and approval. 8/ Finally, regulations imposing racial nondiscrimination requirements on universities issued by HEW pursuant to Title 6 of the Civil Rights Act are also expressly subject to presidential approval. These are just a few examples; there are many more, but these are sufficient to illustrate the point that where Congress intends the President or his advisors to have final authority over rulemaking, it specifically provides for such authority in the enabling legislation.

Indeed, although a recent report of the American Bar Association favors some presidential authority over agency rulemaking, the ABA concluded that, in view of the foregoing statutes, a "statutory grant of carefully limited presidential power to direct certain regulatory agencies to take up and decide critical regulatory issues within a specified time period, and to modify or reverse certain agency actions relating to such issues . . ." was advisable in order to provide the President with the necessary legal authority. 9/ Even after making

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7. 15 U.S.C. §§760, 760(a) (1976).

8. 15 U.S.C. §719(f) (1971).

9. Federal Regulation: Roads to Reform, report of the Commission on Law and the Economy, American Bar Association, exposure draft, August 5, 1978, at 101.

this recommendation, the ABA group felt constrained to also recommend "an appropriate and constitutional opportunity for congressional review of each presidential exercise of the power to intervene proposed above, and of certain other presidential exercises of congressionally delegated authority."10/

In short, there seems to be little question that EPA's existing statutory authority gives the Administrator sole discretion in making regulatory decisions. The President and his advisors, at least under these statutes, have no authority to direct those decisions. Therefore, if statutory authority for such intervention is to be found, it must come from sources other than the statutes which govern EPA's activities.

B. Other statutes governing presidential involvement in agency decisionmaking do not give the president authority to dictate the results of EPA rulemaking

Aside from the generic statutes which govern EPA's authority, there are a number of other statutes which give the President varying amounts of authority to influence the activity of regulatory agencies. Professor Harold H. Bruff of the College of Law of Arizona State University has completed an excellent analysis of these other sources of presidential authority in a paper entitled, "Presidential Power and Administrative Rulemaking." This paper was one of the documents used in

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10. Id.

compiling the report of the ABA Commission on Law and the Economy, discussed above. Although Professor Bruff believes there are certain "functional" arguments for allowing limited presidential intervention in rulemaking, he concedes throughout his excellent study that existing statutory authority for such intervention is virtually nonexistent. If any such authority does exist, he suggests it must be implied. For example, he states very early in his study that "the infrequency of active presidential involvement in rulemaking to date probably both accounts for and results from an absence of direct legal authority supporting it and defining its limits."11/ Because Mr. Bruff's paper touches on many of the issues examined in this memo, it will be referred to quite frequently.

Although Mr. Bruff states that "the President can plausibly assert power to coordinate federal policy as it is formed in rulemaking--within statutory limits, of course. . .," he concedes that:

> Nevertheless, there have been recurrent proposals to enact statutes empowering the President to exercise overall policy coordination, most of which have encompassed the independent agencies. These proposals have not met with success. Congress has been unwilling to shift substantial amounts of power from the agencies to the President, in part because such a change would diminish present congressional influence over them. And there has been reason to doubt that the formation of federal policy would be improved by concentrating it in the White House, thereby creating a potentially

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11. Harold Bruff, "Presidential Power and Administrative Rulemaking," unpublished report to the ABA Commission on Law and the Economy, June 15, 1978, at 5.

unmanageable task.12/

Some of the reasons for congressional rejection of presidential attempts to gain authority over agency rulemaking on the grounds that further coordination is needed are provided by Professor Davis in the 1970 supplement to his Administrative Law Treatise. He specifically points out the dangers of allowing "invisible" White House assistants to interfere in the agency's decisionmaking process. To quote Professor Davis:

> . . . Would they push the policy questions into the political arena? Would invisible White House assistants, using invisible procedures, make mysterious deals, bartering policy positions for political profit, without evidence, without a record, without arguments that are brought out into the open and subjected to counterarguments, and without even the pretense of reasoned opinions? Might not trial by agency, with all its blemishes, take on a new beauty in the eyes of those who have gazed upon the ugly countenance of trial by lobbyists?
>
> Civilization takes a step forward when it moves from the executive process to the administrative process. Nowhere can this truth be more clearly discerned than in the field of the CAB, where international cases are first resolved by the CAB's administrative process and then are thrown to the executive process, where unknown assistants using unknown methods take action for unknown reasons. 13/

Despite the foregoing, the question remains whether there are other statutes which could be construed to give the President the authority to dictate specific rulemaking decisions. One potential source of such authority is the Administrative Procedure Act. Section 4 of that Act governs rulemaking by agencies such

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12. Bruff, supra, at 12.

13. Davis, Administrative Law Treatise, 1970 Supplement, §1.04-4, at 12-13.

as EPA. That section provides:

> (c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. 14/

From the foregoing, it should be clear that it is the agency, and no one else, which is given authority to make a final decision following its review of "relevant matter." Neither this section nor any other in the APA provides for subsequent presidential review of the agency's decision or an initial decision by the President himself or his advisors. Moreover, a recent Supreme Court decision interpreting the Administrative Procedure Act, Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 98 S. Ct. 1197 (1978), strongly suggests that the Supreme Court would be unwilling to read into the Administrative Procedure Act an implied authority for the President to review administrative rulemaking decisions. In that case, the Court specifically rejected efforts by the U.S. Court of Appeals for the District of Columbia Circuit to impose additional procedural requirements beyond those required by the Administrative Procedure Act on regulatory agencies. It is quite likely that the Court would take the same view of presidential efforts to tamper with the basic rulemaking process

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14. 5 U.S.C. §553(c).

provided in §4 of the Administrative Procedure Act. 15/

In addition to the Administrative Procedure Act, there are a number of general statutes which might be construed as giving the President authority to direct specific rulemaking decisions. In his paper, Professor Bruff examines three such statutes, the Reorganization Act,16/ the Congressional Budget Impoundment and Control Act of 1974,17/ and the statute governing activities of the Office of Management and Budget.18/ Regarding the Reorganization Act, Bruff concludes, "the statute does not confer any presidential power to direct policymaking other than by shifting its locus."19/ Indeed, the recent 1977

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15. Professor Bruff tries to make a distinction between judicial review and executive review by the President in considering the impact of this decision. Nevertheless, he concedes that, "Vermont Yankee may imply that the President is similarly not free to go beyond the decisions embodied in the APA in 1946." (Bruff, supra, at 19.)

16. The Reorganization Act of 1977, 5 U.S.C. §§101-112 (1977).

17. 31 U.S.C. §§1301-1407 (Supp. V 1975).

18. 31 U.S.C. §18 (1970).

19. Bruff, supra, at 21.

Amendments to the Act specifically prohibit the President from abolishing "any enforcement function or statutory program." 20/ Congress also cut back on the President's authority to completely abolish certain functions of existing administrative agencies. Indeed, the whole tenor of the 1977 amendments is to impose further congressional authority over executive reorganization plans. To quote the House Report:

> In H.R. 5045, the committee sought to alleviate these constitutional defects by retaining in Congress a considerable degree of participation in the reorganization process. H.R. 5045 seeks to guarantee that every reorganization plan will be put to a vote in both the House and the Senate. 21/

In short, there seems to be every indication that Congress has sought to reduce the President's authority under the Reorganization Act rather than expand it.

The Congressional Budget and Impoundment Control Act of 1974 also provides the President with some authority over agency actions. The Act specifically authorizes the President to defer the expenditure of appropriated funds for the remainder of the current fiscal year, subject only to a one house legislative veto. Professor Bruff, however, points out that:

> For any complete recision of appropriations, however, the statute requires the affirmative approval of both Houses of Congress, which is the functional equivalent of recision by statute. So limited, the recision authority does not confer substantial new power on the President. 22/

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20. 5 U.S.C. §103(a)(3) (1977).

21. U.S. Code Cong. & Ad. News, 95th Cong., 1st Sess., Vol. 1 (1977), at 56.

22. Bruff, supra, at 22.

Finally, the Office of Management and Budget also has some authority over administrative agencies, but primarily through the legislative process. The President is empowered to direct OMB to make detailed studies of agencies in order to improve efficiency, but there is no support for the notion that OMB has the authority to direct specific rulemaking decisions.

From the foregoing, Professor Bruff concludes that there may be sufficient implied authority "for procedural directives concerning rulemaking. . ." but concludes that:

> The general statutes do not seem to provide implied authority for substantive policy directives to agencies, whether they are within the Executive Branch or not. If anything, they carry the contrary implication in their careful limits on the power they grant the President concerning the possible substantive effects of his actions. Thus, the Reorganization Act prohibits the termination of statutory programs; the Impoundment Act authorizes only temporary spending deferrals; both statutes couple their limited grants of power with the special congressional control of the legislative veto. 23/

From the foregoing, it seems clear that (1) both Congress and the President intended EPA to operate as a strong, independent agency; (2) there is no authority in any of the statutes governing EPA's activities for presidential interference in EPA rulemaking decisions; and (3) other statutes giving the President some authority over agencies such as EPA do not confer the authority to direct specific rulemaking decisions. In short, there is no statutory basis for presidential direction of EPA rulemaking decisions. Therefore, the only other possible source for such authority is the Constitution itself.

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23. Bruff, *supra*, at 23.

See Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 72 S. Ct. 863, 870-71 (1952).

C. The Constitution does not give the President the authority to dictate the outcome of EPA rulemaking actions.

1. Presidential Powers over his subordinates are not inherent constitutional powers but are defined by Congress.

In general, the powers of the President are granted either by the Constitution or by act of Congress. Youngstown Sheet & Tube Co. v. Sawyer, supra, 72 S. Ct. at 866. With regard to presidential authority over his subordinates, the applicable constitutional provisions are: (1) "The executive power shall be vested in a President. . . ." Art. II, §1; (2) "The President ... may require the Opinion, in writing, of the Principal Officers in each of the executive departments, upon any subject relating to the duties of their respective offices. . . ." Art. II, §2; and (3) the President "shall take care that the laws be faithfully executed. . . ." Art. II, §3. However, none of these provisions provide the President with any inherent authority to control the activities of his subordinates.

The first clause can be dismissed rather readily. The general grant of an "executive power" to the President is not, as Justice Jackson noted, a "grant in bulk of all conceivable executive power," but rather is "an allocation to the presidential office of the generic powers thereafter stated." Youngstown Sheet & Tube Co. v. Sawyer, supra, 72 S. Ct. at 873 (Jackson, J., concurring). In short, the President's constitutional powers are only those specifically enumerated in the Constitution.

Hence, his power over his subordinates can only be found in the other, more specific, clauses of Article II.

One such power is that of requiring reports from those subordinates. However, one cannot infer a power to direct the activities of another from the power to require that he report on his activities. The clause here is very specific, and it would violate all canons of construction to stretch a power to require reports to include the power to control.

The broadest source of presidential powers is the power to see that the laws are "faithfully executed." It should first be noted that this clause does not require the President to execute the laws himself--his is rather an oversight function. See, e.g., Kendall v. United States, 37 U.S. 524 (1838). This suggests, as will be discussed in detail below, that while the President can review the actions of his subordinates, he cannot necessarily tell them what to do. It all depends on the nature of the subordinate's own authority, and this in turn is defined by Congress.

In fact, the power to see that the laws are faithfully executed is in the end defined by Congress, not the President. The President cannot act like a legislator--he can only execute laws passed by Congress. Youngstown Sheet & Tube Co. v. Sawyer, supra, 72 S. Ct. at 867. 24/ Hence, the Congress tells the

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24. Professor Bruff has concluded that, ". . . And although Youngstown does not preclude assertions of inherent Presidential power in situations where Congress has not explicitly attempted to limit the President, the Court's strong emphasis that Congress is the primary policy maker in domestic matters suggests that it will be unreceptive to unnecessarily broad claims of Presidential power even when Congress has not spoken." Bruff, supra, at 32.

President, with varying degrees of specificity, just what he is to do, and the President cannot go beyond that congressional authorization. As defined by Justice Holmes:

> The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than the Congress sees fit to leave within his power. 25/

This argument applies with particular force to the creation of administrative agencies. "Congress clearly has the power to create federal offices and to define the powers and duties of those offices. . . ." Buckley v. Valeo, 96 S. Ct. 612, 753 (1976) (White, J., concurring and dissenting) (citing Myers v. United States, supra.) The President is bound by the way in which Congress creates these agencies. Humphrey's Executor v. United States, 295 U.S. 602, 55 S. Ct. 869 (1935). In particular, the extent of his control over agency activities is defined by the applicable statute:

> The degree of guidance in the discharge of their duties that the President may exercise over executive officers varies with the character of their service as prescribed in the law under which they act.

Myers v. United States, supra, 47 S. Ct. at 30.

In sum, the presidential duty to see that the laws are faithfully executed is in the end given its content through particular statutes enacted by Congress. These statutes not only define the President's particular powers, but also define those powers expressly delegated to subordinate officials. Thus, to determine the extent of presidential control over an agency like the EPA, we must look to the powers that Congress conferred upon the EPA itself.

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25. Myers v. United States, 272 U.S. at 177, 47 S. Ct. at 85 (1926).

2. The courts have consistently held that, where a particular decision is committed to the discretion of an agency official by Congress, the President has no authority to dictate the outcome of that decision.

We have seen that the Constitution does not give the President any specific authority to dictate the decisions of his subordinate officials. The question nevertheless arises whether the constitutional directive to ensure that "the laws be faithfully executed" contains an implied power which gives the President authority to actually direct the decision of his subordinates, specifically decisions which have been committed to their discretion by an act of Congress.

This issue was first addressed by the Supreme Court in Kendall v. United States, 87 U.S. 527 (1838). That case involved a statute which empowered the Solicitor to determine how much the Postmaster General owed appellants, a group of individuals who had delivered the mail over a number of years. The Postmaster General refused to pay the full amount the Solicitor found was owed, apparently at the express direction of the President. The issue before the Court was whether the President could direct the Postmaster General to ignore the decision reached by the Solicitor, a decision which, according to the statute, was binding on the Postmaster General. In a carefully reasoned opinion, the Court stated:

> It is urged at the bar that the Postmaster General was alone subject to the direction and control of the President, with respect to the execution of the duty imposed upon him by this law, and this right of the President is claimed as growing out of the obligation imposed upon him by the Constitution to take care that the laws are faithfully executed. This is a doctrine

> that cannot receive the sanction of this Court. It would be vesting in the President a dispensing power, which has no countenance for its support in any part of the Constitution; and is asserting a principle, which, if carried out in its results, to all cases falling within it, would be clothing the President with the power entirely to control the legislation of Congress, and paralyze the administration of justice.
>
> To contend that the obligation imposed on the President to see the laws faithfully executed, implies the power to forbid their execution, is a novel contruction of the Constitution, and entirely inadmissible. 26/

In the same opinion, the Court spelled out the relationship between the President and a subordinate officer who was vested directly by Congress with specific duties. The Court stated:

> The executive power is vested in a President; and as far as his powers are derived from the Constitution, he is beyond the reach of any other department, except in the mode prescribed by the Constitution through the impeaching power. But it by no means follows, that every officer and every branch of that department is under the exclusive direction of the President. Such a principle, we apprehend, is not and certainly cannot be claimed by the President.
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> There are certain political duties imposed upon the many officers in the executive department, the discharge of which is under the direction of the President. But it would be an alarming doctrine, if Congress cannot impose upon any executive officer any duty they may think proper, which is not repugnant to any right secured and protected by the Constitution; and in such cases, the duty and responsibility grows out of and is subject to the control of the law and not to the direction of the President.27/

The principles enunciated in the Kendall decision were generally followed in a series of Attorney General Opinions which were requested by various Presidents during the 19th Century.

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26. 37 U.S. at 612-13.

27. 37 U.S. at 610 (emphasis added).

The opinions are significant not only because they are virtually unanimous on the issue, but because they were rendered by political appointees of the President--appointees who presumably were anxious to accommodate the President's interpretation of the Constitution, if at all possible. One of the earliest of these opinions, indeed one which predates *Kendall*, concerns the President's authority to review decisions by auditors regarding the level of veterans' pensions. Congress had given the Comptroller exclusive authority to set such pensions, but many pensioners tried to appeal his decision directly to the President. In this case, the Attorney General advised the President that the Comptroller had exclusive authority under the statute:

> But it could never have been the intention of the Constitution, in assigning this general power to the President to take care that the laws be executed faithfully, that he in person execute them himself . . . He is not to perform the duty, but to see that the officer assigned by law performs his duty *faithfully*--that is, *honestly*, not with perfect correctness of judgment, but *honestly*.

1 Op. Att'y Gen. 625, 626 (1823).

This same conclusion was reached by the Attorney General in 1846.

> It is the constitutional duty of the President to take care that the laws be faithfully executed. But the Constitution assigns to Congress the power of particular subordinate officers; and the President is to take care that they execute their duties faithfully and honestly. He has the power of removal, but not the power of correcting, by his own official act, the errors of judgment of incompetent or unfaithful subordinates.

4 Op. Att'y Gen. 516 (1846).

See also 1 Op. Att'y Gen. 878 (1824); 1 Op. Att'y Gen. 705 (1825); 2 Op. Att'y Gen. 508 (1832) (Comptroller's decision "is conclusive upon the executive branch of government"); 2 Op. Att'y Gen. 481 (1831); 2 Op. Att'y Gen. 544 (1832); 3 Op. Att'y Gen. 630 (1852) (presidential interference "would be a usurpation on the part of the President, which the accounting officers would not be bound to respect" unless Congress expressly ordered them to do so); 11 Op. Att'y Gen. 14 (1864); 15 Op. Att'y Gen. 94 (1876). [28]

Other Attorney Generals have applied this rule to a variety of other situations where a subordinate was directly vested with authority by Congress. For example, the President was told he could not interfere with a patent decision, 13 Op. Att'y Gen. 28 (1869); and he also had no authority to review a department head's decision as to the lowest bidder on a contract, 8 Op. Att'y Gen. 226 (1853). Finally, in the most recent of the applicable Attorney General opinions, it was held that a decision by the Secretary of the Interior not to order a resurvey could not be appealed to the President, because Congress had committed it to the Secretary. The Attorney General there noted that this by now had become a "well settled" question, and he went on to summarize the rule quite well:

> It has been repeatedly held that the observance of your constitutional duty of taking care that the laws be

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[28] The opinions are not unanimous on this score. Some held that the President did have the right of hearing appeals, although these are in the minority. *See* 70 Op. Att'y Gen. 453 (1855); 10 Op. Att'y Gen. 526 (1863). The earlier decision has been called "extreme" by one commentator. Goodnow, *The Principles of the Administrative Law of the United States* 81 (1905).

> faithfully executed does not of itself warrant your taking part in the discharge of duties devolved by law upon an executive officer.

18 Op. Att'y Gen. 33 (1884) (citing many of the opinions discussed supra.)

This interpretation of the President's authority was explicitly upheld by the Supreme Court in Myers v. United States, the first major Supreme Court holding on the issue in the 20th Century.[29] The issue in this case concerned the President's authority to remove a postmaster who had been appointed by the President and confirmed by the Senate under a statute giving him a four year term, subject to removal by the President with the Senate's advice and consent. Following his dismissal, Myers sued for back salary. The opinion is noteworthy because it marks the high water point of Supreme Court support for broad presidential authority to remove his subordinates without the consent of the Congress. As we shall see shortly, this authority has now been substantially cut back, as a result of more recent Supreme Court decisions. Nevertheless, the Court stopped short of holding that the President's power to remove his subordinates also conferred the authority to dictate their decisions, at least those decisions which were committed specifically to the subordinate by statute. The Court attempted to create a distinction between the "ordinary duties of officers prescribed by statute" and those duties "so peculiarly and specifically committed to the discretion of a particular officer as to raise a question whether the President may overrule or revise the officer's interpretation of his statutory duty in a particular

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29. Myers v. United States, 272 U.S. 52 (1926).

instance." Regarding the former, the Court held that "the ordinary duties of officers prescribed by statute come under the general administrative control of the President by virtue of the general grant to him of the executive power, and he may properly supervise and guide their construction of the statutes under which they act in order to secure that unitary and uniform execution of the laws which Article 2 of the Constitution evidently contemplated in vesting general executive power in the President alone." 47 S. Ct. 31. Having said this, however, the Court made it clear that the President's power to guide his subordinates in the conduct of "ordinary duties" prescribed by statute did not extend to the right to dictate specific decisions on regulations committed by law to the subordinate's discretion. The Court held that the President had the authority to remove the subordinate if he thought that the subordinate, on the whole, had not exercised that discretion intelligently or wisely. Thus, the Court recognized that this was a judgment which would have to be made after the fact, and that the subordinate must be allowed to make his own decision. To quote the Court:

> Laws are often passed with specific provision for the adoption of regulations by a department or bureau head to make the law workable and effective. The ability and judgment manifested by the official thus empowered, as well as his energy and stimulation of his subordinates, are subjects which the President must consider and supervise in his administrative control. Finding such officers to be negligent and inefficient, the President should have the power to remove them. Of course there may be duties so peculiarly and specifically committed to the discretion of a particular officer as to raise a question whether the President may overrule or revise the officer's

> interpretation of his statutory duty in a particular instance. Then there may be duties of a quasi judicial character imposed on executive officers and members of executive tribunals whose decisions after hearing affect interests of individuals, the discharge of which the President cannot in a particular case properly influence or control. But even in such a case he may consider the decision after its rendition as a reason for removing the officer, on the ground that the discretion regularly entrusted to that officer by statute has not been on the whole intelligently or wisely exercised. Otherwise he does not discharge his own constitutional duty of seeing that the laws be faithfully executed. [30]

As indicated above, *Myers* represented the high water mark of Supreme Court support for presidential interference in the activities of his subordinates. Although *Myers* stopped short of giving the President the authority to dictate the "quasi legislative" and quasi judicial decisions of subordinates committed to their discretion by Congress, it did hold that the President had the authority to summarily remove the subordinates if he disagreed with those decisions. Obviously, such a holding gave the President substantial political leverage in influencing those decisions, even if he did not have the legal authority to dictate them. However, the *Myers* holding has been severely cut back by the Supreme Court in two key decisions--one handed down in the 1930s and the other in 1958. In *Humphrey's Executor v. United States*, 295 U.S. 602, 55 S. Ct. 869, 79 L. Ed. 1611 (1935), the Court struck down the President's attempt to remove a member of the Federal Trade Commission simply on the ground that the President preferred another appointee who shared his political philosophy. The case is important because it suggests that not only does the President have no authority to dictate the decisions of the EPA Administrator, he may also be limited in his ability to remove the Administrator should he disagree with those decisions because of the nature of the Administrator's duties under the various statutes which he administers. The distinction emphasized by the Humphrey Court was between officials who performed purely "executive" duties and those officials who performed quasi legislative or quasi judicial duties. It was on this basis that the Court distinguished Myers, without actually overruling it.

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[30] *Myers*, *supra* at 31.

> The office of a postmaster is so essentially unlike the office now involved that the decision in the Myers Case cannot be accepted as controlling our decision here. A postmaster is an executive officer restricted to the performance of executive functions. He is charged with no duty at all related to either the legislative or judicial power. The actual decision in the Myers Case finds support in the theory that such an officer is merely one of the units in the executive department and, hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aid he is. 31/

In sharp contrast, the Court found that the Federal Trade Commission was vested with extensive quasi judicial and quasi legislative duties. To quote the Court:

> The Federal Trade Commission is an administrative body created by Congress to carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed, and to perform other specified duties as a legislative or as a judicial aid. Such a body cannot in any proper sense be characterized as an arm or an eye of the executive. 32/

Although EPA was not created by statute, and the Administrator has

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31. Humphrey's Executor, supra at 873-74.

32. Id. at 874.

no fixed term of office, it can be argued that he performs basically quasi legislative and quasi judicial functions, and that this is the basis on which the Court distinguished between the dismissal of a postmaster and the dismissal of a member of the Federal Trade Commission. If the Court relied primarily on the functional difference between the two, then there may be a strong argument that the Administrator of EPA also cannot be fired without "good cause" due to the quasi legislative and quasi judicial nature of the functions which he performs in furtherance of the responsibilities given directly to him by Congress. Some authority for this review is contained in a recent decision of the U.S. District Court for the District of Columbia in *Lewis v. Carter*, 436 F. Supp. 958 (1977). In that case, the court stated:

> The few cases on the issue of the President's removal power indicate that whether an agency's officers are removable at the will of the President depends upon the character of the functions which Congress has confided in the agency. *Wiener v. United States*, 357 U.S. 349, 78 S. Ct. 1275, 2 L. Ed. 2d 1377 (1958); *Humphrey's Executor v. United States*, 295 U.S. 602, 55 S. Ct. 869, 79 L. Ed. 1611 (1935); and *Mueller v. United States*, 272 U.S. 52, 47 S. Ct. 21, 71 L. Ed. 116 (1926). *If those functions are of a quasi legislative or quasi judicial nature as opposed to purely executive, Congress can validly limit the President's removal power by setting terms of office during which officers can only be removed for cause specified by Congress.* 33/

At a minimum, it seems clear that none of these cases gives the President the authority to dictate the results of specific EPA rulemaking actions. Furthermore, it is possible that a court would place some restrictions on the ability of the

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33. Lewis v. Carter, *supra*, at 960-61 (emphasis added).

President to summarily remove the Administrator if he disagreed with those decisions on the grounds that the Administrator's functions are largely quasi legislative and quasi judicial.

Whether Humphrey and its progeny may impose limits on the ability of the President to remove the Administrator without cause is debatable. What seems clear, however, is that these cases prohibit the President and his advisors from interfering with quasi legislative and quasi judicial duties of the Administrator, particularly those duties which are specifically committed to his discretion by statute. It is also equally clear that other components of the Executive Branch operating under the President's direction, such as the Council of Economic Advisors, lack the authority to direct EPA decisions. See United States v. Sandstrom, 22 F. Supp. 190 (N.D. Okla. 1938) (official given authority by Executive Order to decide certain matters not subject to decision by another department); United States ex rel. Accardi v. Shaughnessy, 378 U.S. 260 (1954) (delegation of power by Attorney General to Board of Immigration Appeals, requiring it to use discretion in deportation case, implies that Attorney General cannot exercise that discretion); Glasgow Associates v. United States, 495 F.2d 765 (Ct. Cl, 1974) ("it is established beyond dispute that one government agency is without power to bind another to refrain from performing its sovereign act.")

3. Recent Supreme Court decisions have reaffirmed the authority of Congress to prohibit the President from interfering with the efforts of one of his subordinates to carry out a function specifically entrusted to him by Congress.

In United States v. Nixon, 418 U.S. 683, 94 S. Ct. 3090 (1974), the Supreme Court held that the Special Prosecutor could sue the President of the United States under a regulation issued by the Attorney General which defined the Special Prosecutor's authority and specifically gave him the authority to contest the invocation of executive privilege. In doing so, the Court specifically relied on the Accardi case, discussed above, where the Attorney General through similar regulations had delegated discretion to the Board of Immigration Appeals. The Court stated:

> Here, as in Accardi, it is theoretically possible for the Attorney General to amend or revoke the regulation defining the Special Prosecutor's authority. But he has not done so. So long as this regulation remains in force the Executive Branch is bound by it, and indeed the United States as the sovereign composed of the three branches is bound to respect and enforce it. . . . Moreover, the delegation of authority to the Special Prosecutor in this case is not an ordinary delegation by the Attorney General to a subordinate officer; with the authorization of the President, the Acting Attorney General provided in the regulations that the Special Prosecutor was not to be removed without the "consensus" of eight designated leaders of Congress. 34/

In some respects, the Administrator of EPA is in a similar position to that of the Special Prosecutor. The Administrator, under the Reorganization Plan No. 3, was specifically delegated the authority to enforce certain specific environmental protection statutes passed by Congress. He was also explicitly given the

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34. United States v. Nixon, supra, at 3101-02.

authority to adopt regulations pursuant to those statutes. That delegation was in turn approved by Congress when it failed to contest the Reorganization Plan. Thus, under the Court's logic in United States v. Nixon, so long as this Reorganization Plan remains in force, "the Executive Branch is bound by it, and indeed the United States as the sovereign composed of the three branches is bound to respect and to enforce it." Thus, United States v. Nixon recognizes the principle that once certain discretionary authority has been delegated, that delegation must be honored until such time as the order establishing the delegation is rescinded.

A second recent Supreme Court case, Tennessee Valley Authority v. Hill et al., No. 76-1701, slip opinion (June 15, 1978), establishes the twin principle that once an executive official has issued a regulation to implement a statute, the President and other members of the Executive Branch are obligated to enforce that regulation, even if they do not agree with it. In TVA v. Hill, the Secretary of the Interior had issued regulations which prohibited federal projects which would result in extinction of certain endangered species. The Tennessee Valley Authority refused to stop construction on its Tellico Dam after it was informed that completion of the project would threaten the snail darter. The Court held that the TVA was obligated to comply with the regulation as well as the Endangered Species Act itself. In reaching its decision, the Court stated:

> But these principles take a court only so far. Our system of government is, after all, a tripart type one with each branch having certain defined functions

> delegated to it by the Constitution. While, "[it] is emphatically the province and duty of the judicial department to say what the law is," Marbury v. Madison, 5 U.S. 137, 177 (1803), it is equally--and emphatically--the exclusive province of the Congress not only to formulate legislative policies, mandate programs and projects, but also to establish a relative priority for the nation. Once Congress, exercising its delegated powers, has decided the order of priorities in a given area, it is for the Executive to administer the laws and for the courts to enforce them when enforcement is sought. 35/

Under this logic, neither the courts nor the Executive Branch has the authority to interfere with the Secretary of the Interior's administration of the Endangered Species Act, even if his interpretation appears "unreasonable." As long as that construction conforms to the will of Congress, neither the President nor anyone else has the authority to alter it. 36/

Conclusion

From the foregoing it should be clear that the President and his staff have neither statutory nor constitutional authority to dictat the outcome of specific rulemaking activities committed to the discretion of the EPA Administrator by statute. If the President disagrees with the outcome of specific rulemaking activities, he may have the authority to remove the Administrator without the consent of Congress, but even that authority is somewhat

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35. TVA v. Hill, slip opinion at 38-39.

36. In this regard see footnote 9 to chapter 5 of the ABA Report, Federal Regulation: Roads to Reform, supra at 159.

> As the Supreme Court construed the statute at issue in the snail darter case, the President would lack power to order the Secretary of the Interior not to find the snail darter an endangered species, or to authorize the Tennessee Valley Authority to complete and operate the dam which endangered the snail darter's existence.

questionable in view of the Humphrey decision. Therefore, since the President and his staff are "outside" of the EPA decisionmaking process, the question arises, under what circumstances may the President and his staff attempt to influence EPA rulemaking decisions? Second, what restrictions apply to such efforts? These questions are addressed in the next section of the memo.

III. The President and His Staff Are Governed by the Administrative Procedure Act as well as Court Imposed Prohibitions Against Ex Parte Contacts During Informal Rulemaking

We have seen that the President and his aides do not have the authority to dictate the outcome of EPA rulemaking activities. Nevertheless, like other members of the public, they may attempt to influence the outcome of those rulemaking activities. In doing so, however, they are subject to the same rules which govern the efforts of other members of the public to influence the decision of the Administrator. Since they are "outside the decisionmaking process," they are subject to any prohibition which may exist regarding "ex parte" contacts. Until recently, there were few restrictions, if any, on ex parte contacts during informal rulemaking. However, recent decisions in the U.S. Court of Appeals for the District of Columbia Circuit have dramatically changed this rule. Before getting into the application of these decisions to the President and his advisors, it may be useful to review them briefly.

A. Under Certain Circumstances, Ex Parte Contacts Are Forbidden Under the Administrative Procedure Act.

Ex parte contacts are defined by the Administrative Procedure Act as "oral or written communication[s] not on the public record with respect to which reasonable public notice to all parties is not given. . . ." 5 U.S.C. §551(14). As such, ex parte contacts can take place both during and after the close of the public comment period. These contacts raise three distinct concerns. First, because they are not included in the public record, they make judicial review difficult, if not impossible. As the court noted, in Home Box Office, Inc. v. Federal Communications Commission, 567 F.2d 9 (D.C. Cir. 1977) at 54:

> . . . As a practical matter, Overton Park's mandate means that the public record must reflect what representations were made to an agency so that relevant information supporting or refuting those representations may be brought to the attention of the reviewing courts by persons participating in agency proceedings. This course is obviously foreclosed if the agency itself does not disclose the information presented. Moreover, where, as here, an agency justifies its actions by reference only to information in the public file while failing to disclose the substance of other relevant information that has been presented to it, a reviewing court cannot presume that the agency has acted properly, Citizens to Preserve Overton Park, Inc. v. Volpe, supra, 401 U.S. at 415, 419-20; see K. Davis, Administrative Law of the Seventies §11.00 at 317 (1976), but must treat the agency's justifications as a fictional account of the actual decision-making process and must perforce find its actions arbitrary. See Ruppert v. Washington, 366 F. Supp. 686, 690 (D.D.C. 1973), affirmed by order, D.C. Cir. No. 73-1985 (Oct. 26, 1976).

See also United States Lines, Inc. v. Federal Maritime Commission, Nos. 76-2004, 77-1470 (D.C. Cir. July 28, 1978), slip opinion at 41-43.

Second, there is no opportunity for comment on their substance by outside parties. The lack of such an adversarial discussion of the merits of the comments by the parties can seriously weaken the agency's decision as a whole: "From a functional standpoint, we see no difference between assertions of fact and expert opinion tendered by the public, as here, and that generated internally in an agency: each may be biased, inaccurate, or incomplete--failings which adversary comment may eliminate." Id. at 55.

Finally, ex parte contacts violate basic considerations of fairness in the administrative process. Agency decisions are supposed to be made after a full public airing of all relevant issues and factual disputes. Sangamon Valley Television Corp. v. United States, 269 F.2d 221, 234 (D.C. Cir. 1959). Public participation is a crucial aspect of this principle. But "ex parte communications and agency secrecy as to their substance and existence serve effectively to deprive the public of the right to participate meaningfully in the decisionmaking process." United States Lines v. FMC, supra, slip opinion at 39. Due process therefore requires that such contacts be restricted to the greatest extent possible. Home Box Office, supra, 567 F.2d at 56.

The Administrative Procedure Act expressly forbids ex parte contacts where a formal hearing is required as part of the agency decisionmaking process. 5 U.S.C. §557(d). However, the APA is silent with respect to the permissibility of ex parte contacts during informal rulemaking proceedings. The issue is addressed primarily by three recent D.C. Circuit cases: Home Box Office, supra; United States Lines v. FMC, supra; and Action for Children's Television v. Federal Communications Commission, 564 F.2d 458 (D.C. Cir. 1977).

In *Home Box Office*, the court adopted a stringent prohibition on *ex parte* contacts between interested parties and agency decision makers after the publication of a notice of proposed rulemaking. Presumably in reaction to the harshness of this sanction, the court in *Children's Television* refused to apply it retroactively. Instead, it limited automatic application of the rule to cases "involving competing claims to a valuable privilege." 454 F.2d 477. But in *United States Lines*, the court reaffirmed its broad holding in *Home Box Office*, applying the rule to what apparently was an informal quasi adjudicatory proceeding that did not involve resolution of competing claims to a valuable privilege. See slip opinion at 31-33, 38-39. 37/

Since *United States Lines* is the most recent case on this matter, it should at present be considered to be the controlling case. This conclusion is buttressed by the fact that *Children's Television* was neither mentioned nor discussed in the *United States Lines* opinion, which suggests that the court felt that

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37. *United States Lines* involved an FMC proceeding to determine whether to exempt certain parties from the antitrust laws, pursuant to Section 15 of the Shipping Act of 1916, 46 U.S.C. §1814 (1970). United States Lines petitioned the FMC not to grant the exemption, and at a first meeting the FMC agreed to hold a hearing, as provided in Section 15. But a month later, apparently after extensive *ex parte* communications from the parties requesting the exemption and from the governments of France and Germany, the FMC reversed itself and granted the exemption, without any hearing having been held. The court remanded the case to the FMC, holding: (1) the FMC had not adequately considered the antitrust implications involved; and (2) while a formal hearing pursuant to Sections 556 and 557 of the APA is not required, the FMC nonetheless should not have relied on the *ex parte* contacts it received.

it was decided on an overly narrow principle. Moreover, the court noted in United States Lines that the nature of the proceeding (i.e., competing privilege claims, broad policy, etc.) did not matter as regards the rule against ex parte contacts. The court emphasized the fact that ex parte contacts deprive the public of effective participation in the decision-making process and noted that this was the "common theme" running through all of the cases involving ex parte contacts, however the proceedings were labeled. It found further that because agencies must in every case guard and enforce the public interest, the impacts of their decisions extend "well beyond the immediate parties involved." United States Lines, supra, slip opinion at 39. This implies that Children's Television was wrong in applying the Home Box Office rule only in certain situations; it extends to every informal rulemaking proceeding.

On the other hand, even the rule announced in Children's Television does not restrict the Home Box Office rule only to resolution of competing claims to a valuable privilege. Children's Television concerned a request by petitioners (ACT) that the FCC ban all advertising on children's shows and regulate children's programming to some extent. The industry undertook some self-regulation, and the FCC basically decided that the industry's actions were sufficient. ACT attacked the FCC decision on the grounds that the FCC had abused the administrative process because shortly before the FCC acted, the Chairman met privately with industry to discuss their attempts at self-regulation. The court held that the meeting did not vitiate the decision, but its opinion indicates two general areas where ex parte contacts might prove to be illegal in the future.

First, the court held that the FCC had "substantially" complied with the APA's public participation requirements. ACT had a full opportunity to comment, and they knew about virtually everything brought to the FCC's attention by any party. Hence, considering the process as a whole, ACT's interests had been adequately protected. 454 F.2d at 470-72. This suggests, however, that where ex parte contacts are such that some party's interests are not adequately protected, the court will intervene against the agency. See Courtaulds (Alabama) Inc. v. Dixon, 294 F.2d 899, 904-05 (D.C. Cir. 1961). Thus, the administrative process as a whole must be a fair one, and the agency must take care that ex parte contacts do not vitiate that fairness.

Second, the Children's Television court stated that in some cases, the nature of the ex parte contact alone could invalidate an agency rule:

> We do not propose to argue that [Van Curler Broadcasting Corp. v. United States, 236 F.2d 723 (D.C. Cir. 1956)] stands for the proposition that ex parte contacts are always permissible in informal rulemaking proceedings--they are of course not--but we do think it can be read as supporting the proposition that ex parte contacts do not per se vitiate agency informal rulemaking action, but only do so if it appears from the administrative record under review that they may have materially influenced the action ultimately taken.

564 F.2d at 476 (emphasis added); see also Comment, Ex Parte Contacts in Informal Rulemaking: Home Box Office v. FCC and Action for Children's Television v. FCC, 65 Calif. L. Rev. 1315, 1329 (1977). Contacts may be said to "materially influence"

the agency's action where: (1) there was an intent to influence the agency; (2) the contacts were significant, not trivial; and (3) the contacts did influence the agency or were of such a nature that they could reasonably have done so. Jarrott v. Scrivener, 225 F. Supp. 827, 834 (D.D.C. 1964).

Thus, under the broad rule announced in Home Box Office and United States Lines, all ex parte contacts are illegal. And even under Children's Television, there are three situations in which ex parte contacts would vitiate agency action: (1) where the rulemaking involves competing claims to a valuable privilege; (2) where the contacts are such that they render the process as a whole unfair; and (3) where the contacts "materially influence" the action that is taken. In such cases, the contacts are forbidden outright.

B. Guidelines for Presidential Involvement in EPA Rulemaking Activities

Having determined that the President does not have the authority to dictate the outcome of EPA rulemaking action, and thus that he is subject to legal constraints governing the participation of members of the public in the rulemaking process, it is now appropriate to define what authority the President does have to participate in EPA rulemaking. First, it seems quite clear that he does have the authority to submit comments on proposed rules and participate fully in the rulemaking process.38/ Second, the President or members

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38. Professor Bruff argues that, "it seems probable that he may submit comments on proposed rules, without directing the

of his staff may meet with EPA officials during the course of rulemaking, but a summary of the points made at such a meeting must be made and included in the public record. This is necessary not only to ensure a full record for judicial review, but also to give other members of the public an opportunity to comment on the substance of remarks made at such meetings prior to the close of the public comment period.39/

Although meetings between the President and his staff and EPA officials would be authorized during the rulemaking period subject to the requirement that a summary be prepared, such meetings should cease once the public comment period has closed. There are two principal reasons for this conclusion. First, *ex parte* contacts made after the close of the public comment period, even if disclosed later, are not subject to comment by other members

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38. (cont'd)
the content of final rules. There may well be statutory power to do so. Although Congress has not explicitly authorized the President to comment on proposed rules, it has increasingly sought to guarantee that opportunity to anyone interested, and Congressmen have sometimes submitted comments." Bruff, *supra*, at 66. EDF basically supports this conclusion but does *not* doubt that the President has the authority to comment on proposed rules.

39. Once again, Professor Bruff appears to support this conclusion.

> The initiation of any program for White House or interagency participation in the formation of rules, whether it is to include substantive directives to the rulemaking agency or only comments on its proposed rules, should be accompanied by the imposition of procedural rules similar to those the the *Home Box Office* court followed from Executive Order 11920. . . . Here the requirements of Executive Order 11920 for placing written documents and summaries of oral communication in the public file are appropriate, at least as an initial step.

of the public. The court, therefore, would not have the benefit of adversary comment, something which the Home Box Office court considered essential to a fair rulemaking process. Second, recent amendments to the Clean Air Act, make it essential that the substance of all comments on a proposed rule be made public prior to the close of the public comment period in order that other parties may preserve their right to litigate the substance of these comments should they be accepted by the reviewing agency. Under these amendments, no person may raise an issue in litigation which had not previously been raised in their public comments on the proposed rule. 40/ Furthermore, aside from this problem with rulemaking under the Clean Air Act, there is a substantial legal argument that the Administrative Procedure Act would require the agency to reopen the comment period in order that other parties could comment on the substance of the communication between the White House and the agency. This would be particularly true if the communication involved any new material which had not previously appeared in the record or new analysis of material which did appear in the record.

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39. (cont'd)

> Without such a control, even theoretically nondirective White House or agency "comments" on a proposed rule that are extraneous to the record and perhaps of unknown content could easily deprive a reviewing court of confidence that the rule is what it purports to be, and that the proceedings have been fair to all concerned.

Bruff, supra, at 77-78.

40. See §307 of the Clean Air Act Amendments of 1977.

For all of these reasons, it is highly unlikely that the courts would sanction secret communications between the White House and the Administrator following the close of the public comment period. As Professor Bruff points out,

> . . . *Nixon* does not support a broad executive privilege for communications addressed throughout the executive establishment. On its facts, it focused on deliberations internal to the White House. And the Court held that an "undifferentiated" interest in confidentiality not linked to a need to protect military secrets or other material specifically meriting confidentiality, was insufficient to overcome the demonstrated need for disclosure present in that case. This suggests that absent a particular situation revealing a need for secrecy, *Nixon* will provide no constitutional privilege for presidential participation in rulemaking. That is as it should be: It was argued above that there was greater reason to require White House communications to appear on the rulemaking record than those of other agencies. And the *ex parte* influence cases certainly recognize no special exception for congressional influence in agency decisionmaking. Accordingly, any system for presidential participation in rulemaking should take a form whose openness fosters the widest possible participation by affected persons, to help assure that the theoretical negation of faction in the President's national constituency is realized in practice. 41/

In conclusion, the foregoing guidelines should enable the President and his advisors to participate in EPA rulemaking without violating either the Administrative Procedure Act or recent decisions governing *ex parte* communications during informal rulemaking. On the other hand, these guidelines will give the President and his advisors a full and fair opportunity to influence the Administrator's decision, an opportunity commensurate with that provided to other members of the public.

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41. Bruff, *supra*, at 81-82.

The procedures leave the final decision with the Administrator, as Congress directed, and eliminate any question regarding improper White House influence on the Administrator. For all these reasons, we urge that they be adopted as soon as possible.

cc: President Jimmy Carter
Stuart Eizenstat
Charles Schultze
William Nordhaus
Robert Strauss
Douglas Costle

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TESTIMONY OF JOHN L. McCORMICK
BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
ON THE NOMINATION OF ANNE GORSUCH AS THE ADMINISTRATOR OF
THE ENVIRONMENTAL PROTECTION AGENCY
MAY 1, 1981

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Mr. Chairman, and Members of the Committee,

It is pleasure to appear before you to offer the views of the Environmental Policy Center on the nomination of Anne Gorsuch. The Center has enjoyed a long and continuing relationship with this Committee and with you, Mr. Chairman. As this Congress takes up such vital legislation as the re-authorization of the Clean Air Act , public works authorizations, and toxic waste disposal legislation, the Center looks forward to working with your Committee to adopt responsible laws to protect the public's health and environment. Indeed, some of the most important laws written since the Nation became aware of the need to protect the environment, have been reported from this Committee.

The Clean Air Act, the Water Pollution Control Act, Safe Drinking Water Act, and N.E.P.A. have all become the backbone of this Nation's efforts to assure a healthy and functioning environment for our and future generations. They are as necessary to our industrial and technological society as the mineral resources and skilled workforce are to the economy of America. With their enactment and enforcement has come a noticeable and measured improvement in the quality of the air in industrial cities; cleaner water in lakes and rivers once considered polluted; and, in the licensing and siting process for large industrial and energy-producing projects.

As our industrial base has expanded and evolved, thousands of new chemical compounds have been developed to produce new plastic products, agricultural sprays, and more recently, synthetic substitutes for liquid petroleum and natural gas. The waste products from the chemical industry began to pose frightening health risks to workers and the public and were getting out of control when this Committee adopted the Resource Conservation and Recovery Act and the Toxic and Hazardous Substances Act to curb the industry abuses and begin to elminate the problems.

More legislation and expensive clean-up programs are still required to repair the damage caused by the careless and the insidious dumping of chemical and industrial wastes into landfills, streams and along deserted and public roadways. There may be

32,000 to 50,000 disposal sites in the U.S. containing hazardous wastes. Of these, anywhere from 1,200 to 2,000 sites pose significant risks to human health or the environment. Most of these dumps are still being used but as many as 800 may be abandoned. This Committee is continuing to work towards a solution to toxic waste disposal and the complexities of the issue will demand the most sophisticated research and analysis to assure a feasible remedy.

In all of these legislative debates, the Committee has called upon the technical expertise of the Federal government, and principally, the Environmental Protection Agency, to work out pollution control standards, enforcement mechanisms and permitting procedures. The knowledge and experience gained within the E.P.A. and its regional offices, in the monitoring and enforcement of these pollution abatement laws has become a valuable investment and asset of the American public. If the demands for a safer and cleaner environment are going to be answered, the E.P.A. must be given the essential political support and leadership from within to assure that the laws are being carried out as the Congress intended.

If that agency fails to carry out its enforcement tasks - regardless of industrial and political pressure - the consequences will be felt in Washington once again as angry voters reenact the fights they waged in the early 1970's to get these laws passed.

An effective and sufficiently funded E.P.A. can do much to educate the public as to the real hazards of discarded toxic chemicals or toxic air pollutants and, thereby,allay fears caused by misinformation or misunderstandings. As controversial issues such as the cleanup of the Hooker Chemical waste dump in New York State got more publicity, State and municipal governments began to search for similar dump sites in their regions. This expanded the public awareness of the problems caused by chemical waste disposal. Now, chemical waste cleanup has become a high priority in almost every state and the estimated costs range between $28 and $55 billion.

Local governments cannot afford such a massive program. They may be hard-pressed to find substitute water supplies for their citizens when wells and municipal water supplies have been contaminated. The coordination between the Federal and the State governments will be essential to assure the job is completed and the problem is not repeated.

The administration of the E.P.A. will be in the center of these serious, emotional and very expensive cleanup programs. Failure to carry out the Federal responsibility to assure that money and supervision are made available to complete the task, answer the questions of an alarmed public and advise the Congress could cause an over-reaction by state governments who then seek remedies and compensation in the courts. In this event, the industry and the Congressional delegations will find that the burden has shifted from the E.P.A. to them.

Another highly publicized and valued law, created and improved upon by this Committee, is the Clean Air Act. Its reauthorization during this year will give the Congress an opportunity to make significant changes in that law. Already, industry representatives are confident they will succeed in weakening some provisions and eliminating others because of the perceived change in the political mood of the Nation's voters.

President Reagan has not submitted his version of the Clean Air Act to the Congress as yet. Nor, has he given any real support for the law. The budget has, understandably, taken higher priority, but it has also given a view of the emphasis his administration will place on enforcement and regulation of the Act. For FY 82, the Reagan budget seeks to cut $16 million from the proposed Carter budget for E.P.A.'s regulation of the Clean Air Act. That is 10% of the overall cut of $150 million which the President proposes in all the E.P.A. regulatory-related programs. Given the impacts of inflation upon the operating costs of the agency, those cuts may severely limit the effectiveness of the enforcement mechanisms of these important laws.

He has furthered the speculation that his administration will take a soft-line on controlling industry pollution by nominating an E.P.A. administrator who offers no previous background in administration nor does she appear to have a high regard for the agency she will oversee. Instead, she has been quoted as saying that she looks forward to coming to Washington to whittle the agency down to size. Does that mean she envisions an E.P.A. which will do less enforcing and more advising state and local agencies in carrying on those responsibilities? If that is the case, will her agency be ready and equipped to shift back into the enforcement role when state budgets fall short of the necessary funding to pick up the slack created by E.P.A.'s surrender of those tasks.

As states find their budget needs expanding, they will have to choose between the immediate and long-term programs. Cleaning up pollution spills or illegal chemical dumps may be essential but keeping schools and government services funded will have a higher priority for the state politicians. The outcome will be a more angry public and renewed demands for Federal protection.

For those pollutants which cross state boundaries either in the air or in the water, a weak or absent Federal E.P.A. presence as an arbitrator and regulatory authority, the states will be forced to take their complaints to the courts and industries can play one state off against another as they threaten to move to another state where regulations may be less stringently enforced. Again, this situation causes political solutions - rather than legal remedies - to be sought.

Furthermore, the confusion and delays in implementation of the legislation your Committee adopts will be reflected in the uncertainties which will plague industries trying to expand or locate new facilities. No law is going to please everyone, particularly laws which are as comprehensive as those mentioned earlier. Regardless, the rules of the game have been agreed to after years of debate and review. Industry has learned to operate within those game rules and have prospered. The public has also come to understand those rules as well.

If Ms. Gorsuch is confirmed as the E.P.A. administrator, she must be capable of keeping the wheel turning and following the process. Any failure or delay on her part will result in costly litigation as the public is forced to protect itself from an incompetent or resistant E.P.A. Ultimately, industry, the public and government will suffer the consequences.

Ms. Gorsuch may be a part of President Reagan's "New Beginning". But, she must be aware that her job will not be a beginning as much as it will be a continuation of a process that the public has come to know and respect. She will have the obligation to not only prevent pollution but to improve the quality of the Nation's air, land and water. If she fails to carry out that responsibility, the public will know very quickly, and you will be hearing from them loud and clear. A polluted environment costs the public in health and dollars. They will not tolerate a retreat back to the old days.

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Statement of Susan J. Kokinda
For the National Democratic Policy Committee
On the nomination of Ann McGill Gorsuch
to be Administrator, Environmental Protection Agency
Before the Senate Environment and Public Works Committee
May 1, 1981

The National Democratic Policy Committee is a multi-candidate political action committee and "think tank" established last fall and associated with the efforts of Lyndon H. LaRouche, Jr., to provide national focus and policy for the pro-growth majority of the Democratic Party. The NDPC has adopted a policy of support for those nominations made by President Reagan which are in furtherance of the overwhelming mandate for growth delivered last November. The nomination of Ann McGill Gorsuch as Administrator of the Environmental Protection Agency appears to fulfill that basic criterion, and as such, we offer our support to this nomination.

As the NDPC stated in its testimony in support of Interior Secretary Watt's nomination, the environmentalist hysteria surrounding such a nomination should only recommend it more highly to the American people who announced on election day that they have had enough of the no-growth policies of previous years.

But it is time for the Administration to go beyond good-hearted adherance to a philosophical commitment to economic growth. President Reagan summed up the current paradox of the Administration Tuesday night in a moving address which evoked that which is best in America -- particularly the spirit and vision and technological prowess represented by the Columbia mission. Unfortunately, the content of the President's program of undifferentiated cuts threatens to tear the heart out of the U.S. industrial infrastructure and out of high technology research and development in critical areas of energy, economic, and -- ironically -- space development.

The solution to the unhealthy impact that the federal government has had on the U.S. economy over the past years, in a variety of areas including "environmental" regulations, is not to end all government activity. It is to define the PROPER role of the government in fostering a climate for high-technology breakthroughs needed to maintain our industrial base and surmount so-called resource crises or environmental problems. The effect of some of Stockman's "cold-turkey" budget cuts in key areas will be to do through benign or malign neglect what Ralph Nader would do through overt intervention and obstructionism. Slashing government funding for water projects, fusion research and space development will guarantee that we achieve the status of a formerly-industrialized nation as quickly as if a maze of entangling regulations were to retard growth.

The EPA can play a particularly valuable role in resolving the paradox of current policy. Along with other agencies such as Interior, Agriculture, Energy and CEQ, the EPA is on the front lines in the battle against what we have identified as the "Global 2000" mafia in the Administration.

Our investigations have indicated that it is advocates of the population control/resource control ideology of Global 2000 who are the most significant points of subversion of the spirit, if not the content, of President Reagan's speech.

Global 2000 is a report promulgated by the Carter Administration and is yet one more rewriting of Parson Malthus' thoroughly-discredited population/resource crisis tract of the nineteenth century. Unfortunately, Global 2000's policy of population control is currently U.S. policy, unless it and its proponents are expunged from the Administration.

Proponents of the Global 2000 approach overtly or covertly support the restriction of scientific and economic development because such development "breeds" population. To quote a few advocates:

Dean William F. May of the New York University Graduate School of Business and a participant in a National Audubon Society Conference which launched an organizing drive for Global 2000 in the private sector stated in a recent interview, "It has to be recognized that there is a direct relationship between scientific progress, technological development and population growth. The Global 2000 report addresses the fact that the relationship must be drastically altered. Now we must be careful to prevent scientific progress from automatically producing new surges of population growth. We need a new sense of science. Our population policy must determine our science policy ... The idea is to control and some cases prevent the application of new technology...The core of U.S. strategic doctrine for the rest of the century is population control and science control."

Former New York Times senior editor, John B. Oakes, commenting on an Op-Ed which he wrote which advocates ending government funding for the Tenn-Tom, Red River, Central Arizona and Lock and Dam 26 water projects, stated, "If Tenn-Tom were stopped today, there would be no further industrial development along the Tennessee Valley, which would reduce energy consumption. And there would be no further increase in population growth on the northern Mississippi. This would help."

Applied worldwide, this doctrine will indeed mean "inevitable" political, economic and social dislocation. It is worse than a self-fulfilling prophecy. It is a self-fulfilling policy.

Environmentalist obstructionism is obviously of a piece with the Global 2000 doctrine and the new EPA Administrator clearly has a major role in reversing that, both in terms of policy and personnel. But a blind adherance to David Stockman's brand of budget cutting is just as compatible to the Global 2000 perspective. It is not a coincidence that a recent environmentalist conference, featuring Abbie Hoffman, embraced Stockman's proposed waterway user charges and funding cuts for water projects.

The EPA can play a seminal role in redefining the tasks of government. Our environment will be protected by the continual mastery and application of more "energy-dense" and high-technology production processes, and we hope that the new Administrator accepts that additional challenge.

Thank you for the opportunity to present our views.

TESTIMONY BEFORE THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

ON THE NOMINATION OF ANNE M. GORSUCH TO THE POST OF ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

Presented by Stanley Ezrol of the Fusion Energy Foundation[1]
April 30, 1981

The Fusion Energy Foundation supports the appointment of Anne Gorsuch because she has demonstrated a willingness to stand up to the attacks of self-styled environmentalists against the necessary development of industry. However, in order to serve the requirements of the United States, Ms. Gorsuch must be prepared to reverse the philosophy which has underlay the Environmental Protection Agency from its inception.

The fundamental point to be made is a moral and happily a constitutional one. This moral principle is the starting point of all modern religion, economics, and science: Man is morally superior to nature. It is his absolute right to subdue, use, exploit, or modify nature to suit his purposes. The only limiting consideration in this regard is the necessity for human progress. It is an unconstitutional abuse of Federal authority to protect non-human life forms or inorganic structures for their own sakes. Protecting the environment for human civilization and its posterity must be the only concern of the E.P.A. and its administrator.

The contrary view--that is, the idea that man must serve the alleged needs of the environment--has historically been the philosophical and psychological basis for the most hideous crimes against humanity. It should be noted that this hideous philosophy of man's moral equivalence to inanimate objects is the philosophy of the principal authors of the now infamous Global-2000 report to the President.

To elaborate a scientific basis for approaching environmental questions, I will say a few things about the highly successful LaRouche-Riemann computer based econometric model which the Foundation has participated in developing.

[1] The Fusion Energy Foundation is a non-profit scientific and educational organization. It has approximately 17,000 members in the U.S. It publishes FUSION Magazine which has a monthly circulation of 200,000.

There are three cause and effect relationships on which the model is based.

First, the resource base is determined by the level of energy consumption mediated by technologies. Contrary to the insane ravings of the environmentalists it is not true that technologies and consumption levels must be adjusted to fit a shrinking resource base. Technologies must be developed which make available higher qualities and quantities of energy which makes the necessary resources available for our use. Historically, the way this works is simple. The existence of Land did not produce Agriculture. Land became a resource as we understand it today through the development of increasingly energy intensive agricultural technologies. Petroleum is a vital resource because man developed technologies to extract, refine, and use Petrolmum. The crude oil lying underground did not produce these technologies. We are now developing thermo-nuclear technologies which will make mineral and other resources abundantly available. The point is that if we fail to advance technologically, we will die from resource shortages just as surely as those cultures which never developed agriculture have died off or dwindled down to hand-fuls of starving wretches.

The second causal relationship is this: Capital investment in the form of machinery increases productivity of labor. Constraints on the use of high technology equipment decrease labor productivity and therefore must decrease our ability to improve the environment for progress.

Thirdly, increasing living standards causes technological advances. Technological advance is a creation of the human mind. The creative abilities of the human mind increase as the working day is shortened, nutrition is improved, housing is improved, and the level of culture available is increased.

It should be clear now that these three causal relationships actually represent an ever-expanding cycle of causality. The purpose of these relationships is the continuous expansion of man's knowledge of and mastery over his universe.

These three causal relationships are not opinions of the Fusion Energy Foundation. They are the basis of all economic science and have been programmed into the only accurate computerized model of economic processes which exists today. I refer you to the June, 1981 issue of FUSION Magazine for a more indepth discussion of this question.

In summary, the only constitutional function of the E.P.A. is to facilitate an accelerated exploitation of resources through advancing high energy technologies which both makes possible and is made possible by improvements in the living standards of an advancing population.

Thank you for your attention.

LETTERS IN FAVOR OF MRS. GORSUCH'S NOMINATION

AMA
AMERICAN MOTORCYCLIST ASSOCIATION

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Telephone (614) 891-2425
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April 28, 1981

The Honorable Robert T. Stafford
Chairman, Senate Committee on
Environment & Public Works
5219 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Mr. Chairman,

We would like to recommend the confirmation of Ms. Anne Gorsuch as Administrator of the U.S. Environmental Protection Agency.

We have had dealings with Ms. Gorsuch in her former position in the Colorado legislature. She is bright, dedicated, and has a strong sense of public service. This latter quality, especially, is much needed in the agency to which she has been nominated.

Sincerely,

Ed Youngblood
Director
Government Relations

EY/cb

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April 2, 1981

Honorable Robert T. Stafford, Chairman
Committee on Environment and Public Works
4204 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Stafford:

I have had an opportunity, over the past several weeks, to review the record and experience resume of Mrs. Anne M. Gorsuch. I understand she will be appearing before your Committee in the near future for confirmation hearings related to her proposed appointment as Administrator of the Environmental Protection Agency.

Based on her record, the recommendations of others who have had an opportunity to work with her in her previous positions, and my knowledge of the mission and responsibilities of the U.S. EPA, I have concluded that she is fully qualified for the post of Administrator and I endorse her nomination. I am also very pleased that her proposed Deputy is John Hernandez, an engineer who is very highly qualified in the environmental field, especially wastewater treatment.

Very truly yours,

Charles O. Velzy

Charles O. Velzy
Vice President, Industry Department
American Society of Mechanical Engineers

cc: All members of the Committee on
Environment and Public Works

MEMBER OF ENGINEERS COUNCIL FOR PROFESSIONAL DEVELOPMENT AND ENGINEERS JOINT COUNCIL

**1980 ASME CENTENNIAL
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THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA

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April 7, 1981

The Honorable Jennings Randolph
Committee on Environment & Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Randolph:

The Environment & Public Works Committee will shortly be considering President Reagan's nomination of Anne McGill Gorsuch to be Administrator, U.S. Environmental Protection Agency.

The Administrator of the U.S. Environmental Protection Agency is responsible for our country's environmental protection and must recognize the need for a rational balance between ensuring a clean environment and accommodating industrial and economic development.

The Associated General Contractors of America believes that Mrs. Gorsuch meets these qualifications. In her two terms as a State Representative, Mrs. Gorsuch worked tirelessly on environmental legislation. She was a member of the Committee which drafted Colorado's stationary sources air pollution law. In addition, Mrs. Gorsuch sponsored the compromise legislation dealing with automobile emissions, and she chaired the Interim Committee on Hazardous Wastes.

The Associated General Contractors of America believes Anne Gorsuch is well qualified to administer the U.S. Environmental Protection Agency in a responsible and effective manner, and we urge your support of her confirmation.

Sincerely,

Hubert Beatty

HUBERT BEATTY
Executive Vice President

THE FULL SERVICE CONSTRUCTION ASSOCIATION FOR FULL SERVICE MEMBERS

CF&I STEEL CORPORATION
300 PARK AVENUE
NEW YORK, NEW YORK 10022

R. J. SLATER
CHAIRMAN OF THE BOARD

December 30, 1980

Senator Robert T. Stafford
5219 Dirkson Building
Washington, D. C.   20510

Dear Senator Stafford:

I am writing in support of Anne Gorsuch who is interested in and being considered at this time for an appointment as Deputy Administrator of the Environmental Protection Agency. I can say without hesitation that Anne is more than qualified for that position.

Anne has a broad background which includes exposure to all elements of society including the business and the legislative process. Her past experience, particularly in the Colorado Legislature, has exposed her not only to environmental problems in general but also to the impact of environmental regulation upon business. Anne's decisions in her legislative capacity have consistantly reflected the appreciation of and sensitivity to environmental benefits and the corresponding impact upon business and industry.

I have attached a copy of her resume which indicates quite dramatically her success as a Representative in the State House of Representatives in Colorado and also her ability to accomplish many notable achievements since her departure from college. I am writing to you asking that through your association with the movers and shakers in Washington that Anne be given consideration for the appointment as Deputy Administrator of the E.P.A.

Very truly yours,

RJ Slater

RJS:tk
Attachment

CHAMPLAIN
WATER
DISTRICT
403 QUEEN CITY PARK ROAD
SO. BURLINGTON, VERMONT 05401

April 27, 1981

Senator Robert T. Stafford
Room 5219
Dirksen Senate Office Bldg.
Washington, D.C. 20510

Re: Anne M. Gorsuch - Nominee for Administrator USEPA

Dear Senator Stafford:

I am writing as an active and interested person in the potable water supply industry. Having been responsible for the water quality produced at the Champlain Water District since its formation 10 years ago, and currently a director of the New England Water Works Association, I feel qualified to comment on the referenced nomination.

It is my opinion that although the water supply industry does indeed require regulation to insure that our citizens (and you and I) are not subjected to a health risk when or where ever they consume public drinking water, I do believe that the citizen should also be protected from having to financially support the construction and operation of very expensive treatment processes when there is very little (1) convincing research and data available which is used as a basis for regulations, and (2) consideration given to the cost per capita to implement these "protective" measures.

I have discussed Ann Gorsuch's credentials with Mr. Fred Elwell of Manchester, N.H. Mr. Elwell is on the President's Drinking Water Advsiory Council, and he has had an opportunity to discuss numerous points with Ann Gorsuch regarding the policy and goals of U.S.E.P.A. After hearing some of his comments in reference to her professional background and experience and her phylosophy on the extent of regulatory mandate and its relationship to the citizens' pocketbook, I am endorsing her for confirmation to the office of Administrator of USEPA. I think she will bring a much needed accountability of purpose and deed to the Agency.

Very truly yours,
CHAMPLAIN WATER DISTRICT

Edward Blake
Edward Blake
General Manager

EB/sp

The Coastal Corporation

1333 New Hampshire Ave., N.W.
Suite 205
Washington, D.C. 20036
(202) 293-4385

March 9, 1981

HAND DELIVERED

The Honorable Robert T. Stafford
Chairman, Committee on Environment
  and Public Works
4204 Dirksen Senate Office Building
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

I am informed that your Committee will shortly consider the nomination of Anne M. Gorsuch as Administrator of the Environmental Protection Agency (EPA). From a personal and professional viewpoint, I believe Mrs. Gorsuch is an outstanding nominee. She merits early confirmation by the Committee and its full support in the Administration's efforts to amend and re-authorize the Clean Air Act.

As a Mountain Bell attorney and former Colorado Legislator, Mrs. Gorsuch is sensitive to the impact of Federal environmental regulations in society and the marketplace. I resided in Colorado during Mrs. Gorsuch's service in the Legislature and had the opportunity to observe her in action. She will bring to the Administration of EPA the same sense of determination, integrity and fairness that earned for her the acclaim of the Colorado House of Representatives.

Mrs. Gorsuch is highly intelligent, articulate, and capable of quickly absorbing the details of complex issues. Knowing her legislative mannerisms, I would expect Mrs. Gorsuch to involve a wide range of citizens and interest groups in the development of environmental policy. Likewise, I envision that she will solicit — in fact encourage — frequent consultation with the Congress.

Mrs. Gorsuch's service as EPA Administrator will, I am sure, stand to the credit of this Administration and the aims of your Committee. She is now embarking on a new and difficult challenge and in so doing deserves our full cooperation and all the support we can give.

Sincerely,

Mitchel Stanfield
Washington Representative

MS/bh

COLORADO
CRMCA READY MIXED CONCRETE ASSOCIATION
CSGPA SAND AND GRAVEL PRODUCERS ASSOCIATION
1777 S. Bellaire St./Suite 401/Denver, Colorado 80222/(303) 759-9915

December 31, 1980

Senator Robert T. Stafford
5219 Dirkson Building
Washington, D. C. 20510

RE: Anne McGill Gorsuch

Dear Mr. Stafford:

These particular groups of people would like to support the appointment of Anne Gorsuch as Deputy Administrator of EPA.

She possesses a particularly keen insight concerning what could be a workable balance between the administration, Congress, the bureaucracy, the states and the public.

She has served on Colorado legislative committees which have addressed clean air, clean water and hazardous waste. She displayed in these deliberations the knowledge and rationale which is needed to help this administration meet the challenges ahead.

Sincerely,

R R Downing
Robert R. Downing
Managing Director

RRD/co

COLORADO WATER CONGRESS
1390 LOGAN STREET, ROOM 312 • DENVER, COLORADO 80203 • PHONE (303) 837-0812

RICHARD E. MacRAVEY
Executive Director

April 6, 1981

The Honorable Robert Stafford
United States Senator
Chairman of the Environment &
Public Works Committee
Washington, D.C. 20510

Dear Senator Stafford:

It is with a great deal of pleasure that I transmit the enthusiastic support of the Colorado Water Congress for the appointment of Ms. Anne M. Gorsuch as Administrator of the Environmental Protection Agency.

Ms. Gorsuch would from our personal knowledge make an outstanding EPA administrator. She has the intelligence, commitment, and the practical sense to do a first-rate job!

We urge you and your colleagues in the Senate to confirm Ms. Gorsuch at your earliest possible convenience.

Respectfully yours,

Larry D. Simpson
President

LDM/ss

W.H. McNichols Jr.
MAYOR

City and County of Denver
CITY AND COUNTY BUILDING · DENVER, COLORADO · 80202

AREA CODE 303 575-2721

March 30, 1981

The Honorable Robert T. Stafford
United States Senate
Chairman, Committee on Environment & Public Works
4204 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Senator Stafford:

Ms. Anne Gorsuch is soon to appear before your Committee on Environment and Public Works for confirmation as Administrator of the Environmental Protection Agency.

Since Anne represented Denver in the Colorado State Legislature, I am fully acquainted with her outstanding ability and leadership. She has demonstrated in all of her endeavors a most balanced approach to environmental problems as she evidenced by the way she sponsored and supported pollution legislation that was reasonable but at the same time would produce cost effective positive results.

I feel strongly that Ms. Gorsuch would bring both strong leadership and direction to the EPA and provide a balanced program of environmental protection to all sections of this country.

I endorse her without reservation for Administrator of the Environmental Protection Agency.

Sincerely,

W. H. McNichols

W. H. McNichols, Jr.
MAYOR

DENVER WEST

West Colfax and I-70 · Post Office Box 661 · Golden, Colorado 80401 · 303 232-2006

March 9, 1981

The Honorable Jennings Randolph
United States Senator
Washington, DC 20510

Dear Senator Randolph:

I understand that the Senate Environment and Public Works Committee shortly will be considering the nomination of Mrs. Anne McGill Gorsuch as Administrator of the Environmental Protection Agency.

There is no doubt in my mind that Mrs. Gorsuch will present her credentials most admirably during the hearings, and I will not burden you with repetition of those facts.

However, I want to express concern over negativism which has been expressed in the news media - and presumably directly to the members of the Committee - by some philosophical special interests.

It is my opinion, as a Coloradan who has worked closely with the Colorado legislature and the local government officials who are in the front lines of the fight to both protect the environment and accommodate necessary growth, that Mrs. Gorsuch is highly qualified to make the tough decisions which must be made in the EPA in the years ahead.

Furthermore, most Colorado leaders who have worked with her on both the legislative and corporate scenes feel that she has a great deal of administrative ability. That's important, too, given the budgetary and personnel management constraints which must be exercised in Washington if this nation is to have any hope of restoring economic stability.

Sincerely,

C. E. Stevinson
Charles E. Stevinson
President

CES:tsl

LAW OFFICES OF
DOMINICK, FLETCHER, YEILDING, ACKER, WOOD & LLOYD, P. A.
PROFESSIONAL ASSOCIATION
2121 HIGHLAND AVENUE - P. O. BOX 1387
BIRMINGHAM, ALABAMA 35201

FRANK DOMINICK
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TELEPHONE (205) 939-0033

RICHARD DOMINICK (1926-1976)

May 4, 1981

Senate Environment and Public Works Committee
United States Senate
Washington, D. C. 20510

Re: Anne McGill Gorsuch

Dear Committee Members:

I have read in the newspaper that President Reagan's nominee for head of the Environmental Protection Agency, Anne McGill Gorsuch, is being attacked by the environmentalists on the ground that she is an administrative novice and is lacking in technical expertise on environmental matters. The same kind of criticism could be made of any freshman senator or congressman. It is pretty obvious what the environmentalists mean by "technical expertise". It is "thorough agreement with the Sierra Club position on all environmental issues". Environmentalists certainly have a right to their point of view, narrow though it may be, but they don't have the right to insist that the E.P.A. automatically loses its independence unless it is headed by someone who totally shares the Sierra Club view.

Mrs. Gorsuch is a highly intelligent and capable person with proven leadership qualities. She has been picked by President Reagan after a careful search. She is due to be confirmed promptly so that she can get about the business of providing intelligent environmental protection for the country without shutting down the economy.

Respectfully,

William M. Acker

William M. Acker, Jr.

WMA,Jr./mj

cc: Hon. Howell Heflin
Hon. Jeremiah Denton

March 5, 1981

The Honorable Jennings Randolph
U. S. Senator
Washington, D.C. 20510

Dear Senator Randolph:

We are forwarding this letter to you on behalf of Anne Gorsuch to strongly urge her confirmation as Administrator of the U.S. Environmental Protection Agency. During her two terms of public service in the Colorado House of Representatives, Mrs. Gorsuch represented the constituency of her district in an extremely efficient manner which brought to bear all of her remarkable credentials, including youth, vitality and innovation. Additionally, Mrs. Gorsuch's private career as an attorney for Mountain Bell should serve her well in dealing with the complexities of the Administrator's position in the U.S. Environmental Protection Agency.

As citizens of Colorado who have knowledge of Mrs. Gorsuch's objectivity and background, who also feel that EPA needs an Administrator who can implement the wishes of the Congress and not personal tendencies as past Administrators have done, we would strongly recommend her confirmation as Administrator of the U.S. Environmental Protection Agency.

Very truly yours,

Linda and Noel Hobbs

L&NH:dag

Noel and Linda Hobbs
12603 E. Bates Circle
Aurora, Colorado 80014

Mobil Oil Corporation

P.O. BOX 5444
DENVER, COLORADO 80217
TELEPHONE (303) 572 2100

P.L. HELLMAN
GENERAL MANAGER
EXPLORATION & PRODUCING DIVISION

March 9, 1981

The Honorable Robert T. Stafford
Chairman
Environment and Public Works Committee
4209 Dirksen Senate Office Building
Washington, D.C. 20310

Dear Senator Stafford:

We in the Denver Exploration and Producing Division of Mobil Oil Corporation urge your support of Anne Gorsuch to the position of administrator, Environmental Protection Agency.

Mrs. Gorsuch's qualifications and experience as an attorney and legislator are impeccable. She is an advocate for the West and for sensible, well-balanced environmental policies. We believe that she will serve our country in a most capable and responsible manner, and is most worthy of your support.

Sincerely,

Paul L. Hellman

Paul L. Hellman

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

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NSPE

OFFICE OF THE
PRESIDENT

April 30, 1981

Honorable Robert T. Stafford, Chairman
Committee on Environment and Public Works
4204 Dirksen Senate Office Building
Washington, D. C. 20510

Dear Chairman Stafford:

On behalf of the 80,000 members of the National Society of Professional Engineers, I am pleased to support the nomination of Anne McGill Gorsuch for the position of Administrator of the Environmental Protection Agency.

Ms. Gorsuch's experience as a state legislator in Colorado is especially timely for EPA given President Reagan's commitment to streamline the Federal government's regulations and regulatory procedures. During the first two years of her service in the Colorado House of Representatives, Ms. Gorsuch was largely responsible for repealing more than 70 sections of state legislation considered obsolete, duplicative or unnecessary.

We believe this background will hold her and the country in good stead for the anticipated review of the nation's clean air legislation later this year.

Ms. Gorsuch also is quite knowledgeable regarding environmental concerns. While in the Colorado Legislature, Ms. Gorsuch sponsored air pollution control inspection and maintenance legislation. Furthermore, many of her ideas on hazardous waste management are now under consideration by the Colorado Legislature.

In sum, Mr. Chairman, NSPE believes Ms. Gorsuch to be a reasonable, knowledgeable and eminently well-qualified individual who would serve EPA and the nation well as Administrator.

I request that this letter be made a part of the official record of Ms. Gorsuch's confirmation hearings.

Very truly yours,

William Cox

William A. Cox, Jr., P.E.
President

WAC:TB:jw

2029 K STREET N.W. ■ WASHINGTON, D.C. 20006 ■ 202/463-2300

AN EQUAL OPPORTUNITY EMPLOYE

New England Water Pollution Control Association, Inc.

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Advisor....................Martin Weiss, Boston, MA
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Director....................James E. Leu, Boston, MA
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Director...........Robert W. Livingston, Concord, NH
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Director....................Brent R. Herring, Barre, VT
Fed. Dir.............Robert E. McQuade, Andover, MA

Aldene E. Gordon, *Exec. Sec.*
P.O. Box 138, Rowley, MA 01969
Telephone: 617-948-3822

April 27, 1981

The Honorable Robert T. Stafford
United States Senate
5219 Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford:

The New England Water Pollution Control Association would like to go on record with your committee in support of President Reagan's nomination of Mrs. Gorsuch for the position of Administrator of the Environmental Protection Agency.

Our membership, consisting of more than 2,000 professional practitioners in the field of water pollution control, is extremely anxious to carry on the task of maintaining clean waters for our Region and the Nation. The EPA Administrator is a very important position that must balance the environmental concerns along with the economic constraints and the practical solutions that could lead to achieving the goal.

Mrs. Gorsuch's history of balancing environmental and economic concerns bodes well for the future of the clean water program and the Nation.

We emphasize our support for the President's choice and we hope that the Committee will consider our endorsement in its deliberations

Very truly yours,

M Hamdy Bechir

Dr. M. Hamdy Bechir, P.E.
President - NEWPCA

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June 8-10
Sheraton Inn, Newport, RI

October 19-21
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TELEPHONE 303/861-4400
CABLE ADDRESS: POPDEN

OF COUNSEL
A. T. SMITH
JAMES W. CAMPBELL

April 23, 1981

Hon. Robert Stafford
Senate Office Building
Washington, D. C. 20013

Dear Senator Stafford:

Over a period of years I have been practicing law in Denver, but I was born in Boston and brought up in Winchester and went to Dartmouth College and the Harvard Law Schools so I have a considerable touch of New England in my background.

I am writing you about Anne Gorsuch.

During the time that she served in the Colorado Legislature I observed that she was a hardworking legislator who was totally prepared and well-informed on legislation that came under consideration. She showed a thoughtful and well-balanced approach to legislative and administrative matters. She is a determined woman who carries through on worthwhile projects in which she believes.

She has an excellent reputation here in Colorado and in my opinion is highly qualified to serve our country as Administrator of the Environmental Protection Agency.

Those of us who seriously follow public and governmental affairs here in Colorado have a high regard for her.

Yours very truly,

Arthur Thad Smith

Arthur Thad Smith

ATS:jeh

Donald C. Sutherland, P.E., L.S.
Donald D. Ricketts, P.E.
Gilbert F. Rindahl, P.E.

Sutherland, Ricketts and Rindahl, Consulting Engineers, Inc. • 2180 S. Ivanhoe Street • Denver, Colorado 80222 • (303) 692-0922

REC'

March 4, 1981

The Honorable Jennings Randolph
United States Senator
Washington, DC 20510

Reference: Anne Gorsuch Confirmation Hearing

Dear Senator Randolph:

The qualifications of Mrs. Anne Gorsuch, her experience in the Colorado House of Representatives and her stand on vital issues concerning the environment should well qualify her for the position of Administrator of the U.S. Environmental Protection Agency.

Mrs. Gorsuch is presently an attorney for Mountain Bell where she has gained considerable experience in dealing with the public as well as the complexities of regulations of the Environmental Protection Agency. She was one of the youngest graduates of the University of Denver Law School, graduating at age 23. She is extremely intelligent, is able to make objective decisions and is willing to listen to arguments for both sides. She was a two-term member of the Colorado House of Representatives and a member of the Transportation and Education Committee which was concerned with many of the same issues as the Environmental Protection Agency.

Your vote for Mrs. Gorsuch to be confirmed would be very much appreciated and would be a major step forward in the reduction of unnecessary regulations which are now hampering the development of Colorado's energy resources.

Sincerely,

SUTHERLAND, RICKETTS and RINDAHL,
CONSULTING ENGINEERS, INC.

Donald Ricketts
Donald D. Ricketts

DDR:j

City Hall
City of
Thornton

8992 N. Washington Street
Thornton, Colorado 80229
(303) 289-5801

March 11, 1981

The Honorable Jennings Randolph
United States Senate
Washington, D.C. 20510

Dear Senator Randolph:

The City of Thornton Utilities Department provides water and sewer service to nearly 65,000 people in the northern portion of the Denver Metropolitan area. The Department urges the confirmation of Anne Gorsuch as Administrator of the U. S. Environmental Protection Agency. Mrs. Gorsuch's credentials are excellent for this type of position. Much of Mrs. Gorsuch's career has been spent as an attorney for public utility companies. This type of experience will help her cope with the complexities of laws and regulations which have been promulgated by the Environmental Protection Agency. Mrs. Gorsuch has also been a member of the Colorado House of Representatives for two terms. We feel that this legislative experience will help her ensure that good communication exists between the Congress and the Environmental Protection Agency.

We believe that Mrs. Gorsuch will be a tough and fair administrator. She will provide the type of leadership which will ensure that all interests are fairly treated. Many decisions will have to be made regarding energy, water and the environment here in Colorado. Mrs. Gorsuch will provide the fair and impartial leadership necessary to ensure that this development meets both the economic and environmental needs of the people.

Sincerely,

CITY OF THORNTON, COLORADO

Lloyd J. Gronning

Lloyd J. Gronning
Utilities Director

/pa

cc: file (2)

Water for Colorado
A Citizens' Committee, Inc.

1360 S. Clarkson St
Denver, Colorado 80210
(303) 777-7564

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March 3, 1981

The Honorable Jennings Randolph
United States Senator
Washington, DC 20510

Dear Senator Randolph:

This organization, which counts among its members most of the municipal and many of the agricultural water supply entities in the State of Colorado, strongly urges confirmation of Anne McGill Gorsuch as Administrator of the U.S. Environmental Protection Agency.

We believe Mrs. Gorsuch's credentials to be first-rate. She was a bright and innovative member of the Colorado House of Representatives for two terms - certain to have become a member of the leadership, had she chosen to run again.

Mrs. Gorsuch's career as an attorney for a public utility company will serve her well in coping with the complexities of law and regulations which have enveloped the EPA.

She has another asset which should be mentioned - youth. While that particular asset may have kept her from piling up years of experience behind an administrative desk, we feel that her intelligence and ability to learn quickly will make her one of the most effective administrators in Washington.

And finally, we want to point out that Mrs. Gorsuch has the toughness and fairness which will be required of the EPA administrator at a particularly critical time in our nation's history. We in Colorado are painfully aware of the push-pull which is attending the quest for energy sufficiency and self-sufficiency. There is, in an energy crash program, the potential for serious degradation of our quality of life, but on the other hand, our quality of life (and the economy) also will suffer if severe energy shortages occur.

We would want an Anne Gorsuch at the helm of EPA when these painful decisions must be made. We believe she will be fair and impartial.

Sincerely,

Robert L. Tonsing

Robert L. Tonsing
Executive Vice President

RLT:sl

LETTERS OPPOSED TO MRS. GORSUCH'S NOMINATION

AMERICAN PUBLIC HEALTH ASSOCIATION
1015 Fifteenth Street, N.W., Washington, D.C. 20005 • (202) 789-5600

LARRY J. GORDON, M.S., M.P.H., *President*

April 1, 1981

The Honorable Jennings Randolph
Environment & Public Works Committee
4204 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Randolph:

The American Public Health Association opposes the nomination of Anne M. Gorsuch as Administrator of the Environmental Protection Agency. We are distressed about her obvious lack of requisite qualifications for this position. Scientific knowledge, as well as managerial skills, is essential to the position of EPA Administrator.

The affairs of the Environmental Protection Agency directly affect the health and well being of this and future generations. This Agency's mission is to protect and enhance our environment to the fullest extent possible under the laws enacted by Congress. We are concerned that the appointment of Ms. Gorsuch may indicate the Administration's desire to compromise important environmental laws that were enacted after years of careful consideration and debate.

Recent polls continue to indicate that a majority of Americans favor pollution controls, even at a price. Our citizens' concerns would be effectively rejected if EPA were to be administered by one who is clearly not an advocate of environmental health, or by one so lacking in managerial and scientific qualifications. The possible nomination of Ms. Gorsuch suggests that the Administration wants a "fox guarding the chicken house" situation at EPA.

We are confident that this Administration can find a more suitable candidate for Administrator of EPA. The American Public Health Association notes with distinct satisfaction and approval the outstanding qualifications of Dr. John Hernandez, candidate for EPA Deputy Administrator, and suggests that he or other equally qualified candidates should be given further serious consideration for the EPA Administrator position.

Very truly yours,

Larry J Gordon

Larry J. Gordon, MS, MPH
President

THE BOARD OF DIRECTORS, COLORADO
2239 EAST COLFAX
DENVER CO 80206

western union Mailgram

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3033930466 MGM TDBN DENVER CO 57 03-25 0501P EST

SENATOR ROBERT STAFFORD
U S SENATE
WASHINGTON DC 20510

THE BOARD OF DIRECTORS OF THE COLORADO OPEN SPACE COUNCIL STRONGLY URGES YOU TO VOTE "NO" ON THE CONFIRMATION OF ANNE GORSUCH AS EPA ADMINISTRATOR. WE FEEL HER DEPTH OF EXPERIENCE DOES NOT QUALIFY HER FOR THIS POSITION.

THANK YOU,
THE BOARD OF DIRECTORS, COLORADO OPEN SPACE COUNCIL

17:02 EST

MGMCOMP MGM

TO REPLY BY MAILGRAM, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

environmental action
Suite 731 1346 Connecticut Ave. NW Washington, DC 20036 (202) 833-1845

April 21, 1981

The Honorable Robert A. Stafford
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator Stafford,

Environmental Action is opposed to the nomination of Ms. Anne Gorsuch to be Administrator of the Environmental Protection Agency. We respectfully request the opportunity to appear before your Committee to present our views on this nomination and the implications it may have for the Environmental Protection Agency.

The job of Administrator of the Agency is a difficult one. It requires a detailed knowledge of the administrative and technical issues surrounding environmental problems. Unfortunately, we believe that Ms. Gorsuch lacks the expertise and administrative background to make those decisions.

We look forward to appearing before the Committee to express our views on this important matter.

Yours,

Elizabeth A. Davenport

Elizabeth A. Davenport
Coordinator

ED:mw

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JEANNE KRONMAN
Box 237
Locust Valley, N.Y. 11560

May 5, 1981

Memo to: Mr. Robert Stafford
Mr. Alfonse D'amato
Mr. Daniel P. Moynihan

Gentlemen:

I wish to request that you do not approve the nomination of Anne Gorsuch as administrator of the E. P. A. She has had no administrative experience or technical background, nor has she shown a dedication to protect our air, land, water and wildlife.

She is also a "friend" of James Watt.

I believe that Mr. Reagan can find someone more suitable for this position.

Sincerely,

Jeanne Kronman
(Mrs. A.F. Kronman

470 Clayton Street
Denver, Colorado
February 24, 1981

The Honorable Robert Stafford, Chairman
Senate Environment and Public Works Committee
Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford:

I want to offer you some comments, and perhaps a unique perspective, on the appointment of Anne McGill Gorsuch as Administrator of the Environmental Protection Agency.

Ms. Gorsuch was the Representative to the Colorado legislature from my own district from 1977 to 1980. As her constituent, I had opportunity to observe her actions from a front-row seat. I was not pleased with what I saw and heard. Her essentially anti-environmental stance on several issues makes me seriously question her dedication to the principles of environmental quality which the EPA was formed to promote. I cannot agree with her own description of herself as an "environmentalist".

Let me get specific. In 1977 the Colorado Legislature began its biennial rite of trying to effectively gut the one Colorado law that provides some protection for in-stream flows. The State, under this law, may file for water rights on a stream in order to protect the public interest in fish and wildlife. The rights are still quite junior in most cases, so the State's power is actually quite limited. (Water law in Colorado follows the "first in time, first in right" principle). This is the only law we have that can be used to prevent diversion of all the water in a stream and consequent drying up of all surface flows (plus loss of fisheries and scarce riparian habitat). Ms. Gorsuch not only supported the bill but also refused to debate the specific points brought out in my letters to her. She merely assured me that "all concerned are vitally interested in preserving a free-flowing stream system."

Ms. Gorsuch in 1978 supported a Senate Joint Resolution that would have seriously undermined the Colorado Mined Land Reclamation Board's powers to require adequate land reclamation in Colorado. THis bill would have deleted any mention of wildlife considerations, eliminated the provisions for public notice, and de-emphasized the restoration of vegetation and soils which are so crucial in the arid west. It supposedly would have aided the "small miner" by reducing the "excessive" costs of a reclamation plan. Since most of the mining firms in Colorado that I'm acquainted with are large corporations (for example, AMAX, Inc.), and since the "excessive" costs amounted to some $200 to $400, I was sceptical. Again, Ms. Gorsuch avoided any discussion of the substantive issues and supported the bill.

I have serious doubts about Ms. Gorsuch's ability to run a large agency such as EPA. Her career includes no administrative experience, no regulatory experience, and no background in the complex field of air and water pollution. I am unaware of any qualifications she may have for this job, except to fulfill some perceived need for a "token woman" on the Cabinet. Furthermore, her reluctance to address the substance of environmental issues and her focus on irrelevant details of the questions I discussed with her, suggest that she will be unable to deal with the complexities of environmental regulation.

As a woman, I am pleased when women receive equal consideration for responsible positions, but I do not appreciate the hiring of any woman, even as a Cabinet member, when she is unqualified for the job. This seriously undermines the efforts of women to achieve professional parity with men.

Thank you for your time and attention.

Sincerely yours,

Pauline D Plaza

Pauline D. Plaza

470 Clayton Street
Denver, Colórado 80206

National Audubon Society
NATIONAL CAPITAL OFFICE
645 PENNSYLVANIA AVENUE, S.E., WASHINGTON, D.C. 20003 (202) 547-9009

May 1, 1981

Senator Robert T. Stafford
Chairman
Committee on Environment and
Public Works
U.S. Senate
Washington, D.C. 20510

Dear Senator Stafford:

This is to express dismay over the nomination of Anne M. Gorsuch to head the United States Environmental Protection Agency.

Ms. Gorsuch has no administrative experience or any technical background whatever to bring to the job of EPA Administrator--a job in crying need of such qualifications. She has evidenced no dedication to protecting our air, land water and wildlife; indeed, as a Colorado state legislator she joined a lawsuit brought by James Watt's Mountain States Legal Foundation to block Clean Air Act rulings by EPA in her state.

There are two ways to undermine a government agency. One is by drastic budget cuts. The other is by the appointment of unqualified administrators. On both counts, the Administration is doing its best to render the Environmental Protection Agency ineffective.

This appointment, if confirmed, will pose an additional threat to the nation's air, land, water and wildlife. And it will be an additional insult to the many millions of Americans dedicated to maintaining and improving environmental quality.

Sincerely,

Russ Peterson

Russell W. Peterson
President

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CIVIL ENGINEERING: A PEOPLE-SERVING PROFESSION

Senator Robert Stafford
5219 Dirksen Senate Office Bldg.
Washington, D.C. 20510

7 May 1981

Dear Chairperson Stafford,

I am extremely disturbed by the nomination of Ann M. Gorsuch for the position of Administrator of the Environmental Protection Agency. This letter is an attempt to explain my reasons for opposing her confirmation. The EPA,as I am sure you are aware, is charged with both formulating and enforcing laws which are scientific in nature. As head of the EPA, a person would have to possess not only legal and administrative skills, but also a sound foundation in the natural and applied sciences. These types of qualifications are rarely found in many persons; a situation that I'm sure you'll agree makes the nominee for this position one of the most important unelected officials in our Nation's Capital.

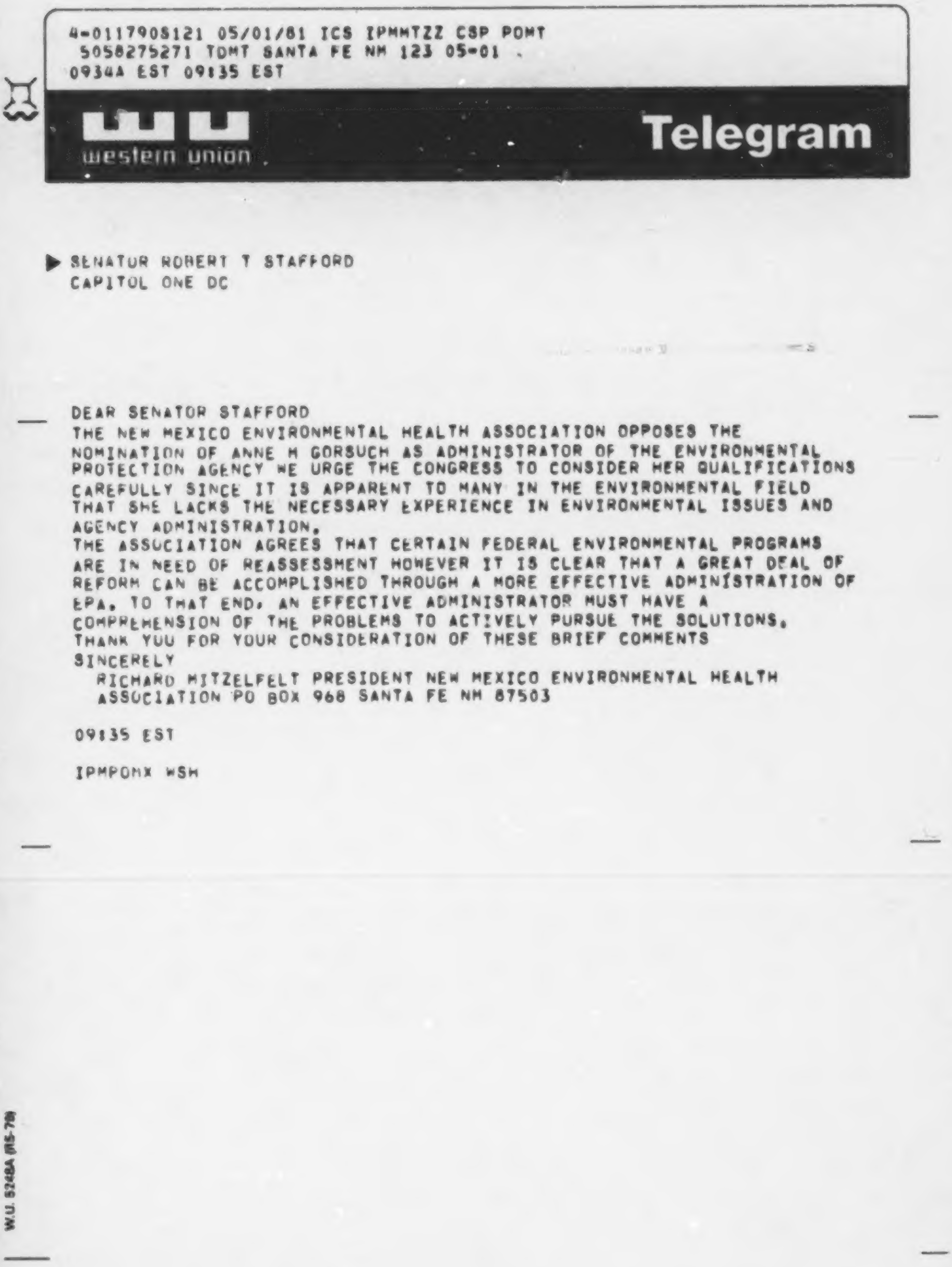
Ann M. Gorsuch surely does not have the qualifications which would enable her to preform the sizable responsibilities of this delicate position within the Executive. She is a state politician who served only four years in the Colorado legislature. She is a lawyer who dealt in corporate law for a telephone company. The"key role" she played in the enactment of the Colorado Air Quality bill was, in fact, holding it up in subcommittee in an attempt to saturate the opposition who were objecting to the lenience of the measure. What I'm saying is that you can't play "politics" with the environment. You cannot "regulate" what infact regulates you. The increased politicization of the EPA can only lead to a decrease in its ability to protect the environment. Such a decrease can in part be averted through the defeat of the nomination of Ms. Gorsuch. It is my hope that this letter will aid in that defeat.

With highest regards,

Casey J. Monahan

Casey J. Monahan
1403 Bob Harrison
Austin, Texas 78702

P.S. An acknowledgement of the receipt of this letter would not only be informative, but also greatly appreciated.



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Telegram

SENATOR ROBERT T STAFFORD
CAPITOL ONE DC

DEAR SENATOR STAFFORD

THE NEW MEXICO ENVIRONMENTAL HEALTH ASSOCIATION OPPOSES THE NOMINATION OF ANNE M GORSUCH AS ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY WE URGE THE CONGRESS TO CONSIDER HER QUALIFICATIONS CAREFULLY SINCE IT IS APPARENT TO MANY IN THE ENVIRONMENTAL FIELD THAT SHE LACKS THE NECESSARY EXPERIENCE IN ENVIRONMENTAL ISSUES AND AGENCY ADMINISTRATION.

THE ASSOCIATION AGREES THAT CERTAIN FEDERAL ENVIRONMENTAL PROGRAMS ARE IN NEED OF REASSESSMENT HOWEVER IT IS CLEAR THAT A GREAT DEAL OF REFORM CAN BE ACCOMPLISHED THROUGH A MORE EFFECTIVE ADMINISTRATION OF EPA. TO THAT END, AN EFFECTIVE ADMINISTRATOR MUST HAVE A COMPREHENSION OF THE PROBLEMS TO ACTIVELY PURSUE THE SOLUTIONS.

THANK YOU FOR YOUR CONSIDERATION OF THESE BRIEF COMMENTS

SINCERELY

RICHARD MITZELFELT PRESIDENT NEW MEXICO ENVIRONMENTAL HEALTH
ASSOCIATION PO BOX 968 SANTA FE NM 87503

09:35 EST

IPMPOMX WSH

MRS. DONALD W. KINGSBY
21 CHERRYMOOR DRIVE
ENGLEWOOD, COLORADO 80110

APR 5 1981

Feb. 23, 1981.

Dear Senator Stafford, Chairman of the Environment and public works committee,

I was shocked to read of Ann Gorsuch's appointment to head of EPA. I have been working on hazardous waste legislation for two years, and although I am a Republican, I found her to be an obstructionist, with very little background, expertise or concern for the environment. At the present in Colorado, we are trying to rewrite S.B. 12, her committee's bill which gives county commissioners authority over hazardous waste dumps--preserving the status quo and perpetuating Love Canals, Lowry Landfills, etc. The Governor appointed me chairman of the Lowry Landfill Monitoring Committee, a difficult task in light of gross indiscriminate dumping in the past and lack of a state plan.

Ms. Gorsuch is intelligent with a legal background and would be more qualified in the Justice Dept. or elsewhere. I am sure she was chosen for her anti-regulatory, pro-business attitude, but is that really enough qualification for such an important position?

Sincerely,
Karen K. Kingsby

April 17, 1981

Honorable Robert T. Stafford
Chairman
Committee on Environment and
Public Works
4204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford:

I recently received a copy of a letter addressed to you, dated March 19, 1981, from Charles E. Jones, the President of the American Society of Mechanical Engineers (ASME). In that letter he endorsed the nomination of Mrs. Anne Gorsuch for the position of Administrator of the Environmental Protection Agency. In his letter, Mr. Jones kept his endorsement personal.

While the President of ASME is authorized to speak for ASME as an organization, his views do not necessarily reflect those of the entire ASME membership or even a majority of the members. The Executive Committee of the Technology and Society Division of ASME disagrees with Mr. Jone's views.

We have examined the resume of Mrs. Gorsuch and believe she does not posess the experience and knowledge necessary for such an important position. Furthermore, her support of "engineers", as evidenced by her choice of Deputy, does not add to or detract from her qualifications.

Sincerely,

Richard J. Peppin
Chairperson, Technology and Society
Division

5012 Macon Road
Rockville, Maryland 20852

cc: Executive Committee
Charles Jones, President - ASME
George Freid, V.P., General Engineering Department - ASME
Mitchell Bradley, Washington Representative, ASME
All members of the Committee on Environment and Public Works

April 24, 1981

Honorable Robert T. Stafford
United States Senate
4204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford,

It is my understanding that your Committee will soon consider the nomination of Anne Gorsuch as Administrator of the Environmental Protection Agency. I have read numerous news reports regarding Ms. Gorsuch's lack of knowledge and experience in environmental issues, and her general hostility to EPA and environmental regulation.

I share the concern of other Americans with the need for reduction of government expenditures to eliminate deficit spending, and I realize that all programs, including those of EPA, must share in budget trimming. I favor streamlining regulations where they can be improved. But I am not in favor of EPA being run from Interior Secretary James Watt's desk, and that is what I see developing. Apparently, the only qualification needed for this position (or any other government appointment involved with natural resources) is to be "recommended" by Joseph Coors.

Polls show that popular support of environmental protection is at an all time high. Putting Gorsuch in charge of EPA is a slap in the face of every environmentally concerned American.

One of the most frequent criticisms of EPA has been the lack of experienced, qualified scientists and engineers in the top echelons. Hernandez of New Mexico is such a candidate, and eminently qualified for this position. Gorsuch's only qualification appears to be a fanatical allegiance to James Watt.

Please support a nominee qualified for this important job. The American people deserve better than Anne Gorsuch.

Sincerely,

Robert Smith

Robert P. Smith
9509 Midway Road
Dallas, TX 75220

May 6, 1981

Chairman Robert Stafford
Senate Environment Committee
U. S. Senate
Washington, D.C. 20510

RE: EPA nominee

Dear Chairman Stafford:

I strongly object to the nominee Anne Gorsuch as administrator of EPA.

The LAST thing we need is an EPA administrator wrapped up in politics and the "legalities" rather than the envisonmental realities.

The head of EPA SHOULD be someone with a general knowledge of the environment, such as Gus Speth, CEQ, who, while maybe not a "specialist" in any particular field, has a good overall knowledge of the entire environment and, just as important, a sense of interaction of various aspects of environmental regulation.

I also object to Deputy Administrator-John Hernandez. Engineering is what has gotten the environment so messed up. The last thing we need is a second-in-command following up the "legalities" with a little engineering.

I would strongly urge the consideration of Gus Speth as head of Environmental Protection Agency, so that the actions of EPA will match the message implicit in its title.

Sincerely,

A. E. Wasserbach, MRS
Box 2308 W. Saug. Rd.
Saugerties, N.Y. 12477

Anne McGill Gorsuch
ATTORNEY AT LAW
243 SOUTH FAIRFAX STREET
DENVER, COLORADO 80222
399-6363

May 3, 1981

Honorable Robert T. Stafford
Chairman, Committee on
 Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your many courtesies and for the opportunity to appear before your Committee. I will look forward to future appearances, as we work together to achieve our mutual goals.

My answers to the sixty-five questions which you and other Members of the Committee submitted after the hearing are enclosed. Also enclosed are my responses to the questions submitted by Senators Randolph, Moynihan and Baucus, before the hearing. I appreciate your special assistance in expediting the confirmation process, and I wanted to respond promptly, in order to assist you in that effort.

Sincerely,

Anne M. Gorsuch
Administrator-Designate

AMG/kab
Enclosure

QUESTIONS AND ANSWERS

FROM SENATORS

BAUCUS, MOYNIHAN AND RANDOLPH

SUBMITTED BEFORE

MAY 1, 1981 HEARINGS

May 2, 1981

SENATOR JENNINGS RANDOLPH

Questions and Answers

1. The Administrator has forwarded to Congress legislation designed to revise the construction grants program. It has been stated by the Administration that it will recommend that the sum of $2.4 billion be made available for that program in fiscal year 1982 should this legislation be enacted. What is your view of the appropriate continuing role of the Federal government in sewage treatment construction after fiscal year 1982?

As was noted in President Reagan's Budget Message, greater emphasis must be placed on assisting municipalities meet specific water quality goals. The President pledged to recommend the resumed federal commitment when legislation revising the construction grants program is enacted. The speed with which the Administration's revision legislation was forwarded to the Congress is an indication of a continuing commitment to a Federally assisted construction grants program. As that legislation and other measures are considered by this Committee this year, I hope we can work together to refine Title II of the Clean Water Act to assure that Federal monies are used efficiently and effectively for environmental goals in the grants program. Legislation requiring efficient and effective use will do more than almost any other action to insure a continuing, viable, and stable Federal committment.

2. The Environmental Protection Agency has recently forwarded to the Congress a report on potential effects of the Industrial Cost Exclusion (ICE) provision on the construction of publicly owned treatment works. This report discusses a multitude of problems with the provision, yet does not contain any Administration recommendations. EPA explained that the absence of its highest officials precluded making such recommendations. This absence did not prevent EPA sending up suggested changes in the construction grants program. It is a fair conclusion that EPA has not developed legislative initiatives for the ICE program because it prefers implementation of the provision as it currently stands, or believes it is consistent with the reduced construction grants program? What is your view on including or excluding industrial treatment costs in the construction grant program? Do you anticipate that the Administration will forward legislation making changes in the ICE program later this year?

I have not had an opportunity to study this issue. My preliminary review convinces me that it is a subject I must give great attention early on in my administration. My review revealed that the Environmental Protection Agency report provides information on effects of Industrial Cost Exclusion (ICE) and, as you note, does not contain any recommendations. Congress directed EPA to report on the effect of ICE and on appropriate degrees of Federal and non-Federal participation in the grant program. The report addresses both of these matters. In developing any recommendations, I believe one must keep in mind (1) the history of joint municipal/industrial treatment (indeed, the 1972 Clean Water Act and its 1977 Amendments favored regional joint treatment), and (2) the reduced Federal monies available for the construction grants program. EPA's report indicates that over 400 communities will be impacted by ICE. Of these, 80 could be seriously affected. Almost one-half of these impacts will hit the food products industry hardest. As Title II of the Clean Water Act is reviewed for reauthorization this year, it is appropriate for the Committee to examine ICE. I fully expect that by the time this issue is addressed by the Committee, a recommendation by the Administration will be available.

3(a) The Clean Air Act provides that limited waivers of statutory automobile emissions standards for NOx (for light duty diesels) and CO can be made by the Administrator after a specified procedure is followed and certain findings made. The April 6 announcement proposing regulatory relief for the automobile industry announces that consolidated NOx and CO waiver proceedings would be initiated. That may be consistent with the Clean Air Act. But the announcement also suggests that the decision to grant the waivers has already been made, along with other modifications or requirements requiring rulemaking, before the proceedings begin. Under the law, this decisions is yours as Administrator, not that of Vice President Bush or the Task Force on Regulatory Relief. Have you already made your decision on the NOx or CO Waivers? Please outline the procedure you intend to follow on consideration of waiver requests and other regulatory changes effecting motor vehicle emissions.

I must take issue with your inference that a decision has been made to grant the waivers. I do not interpret the consideration of consolidating the NOx and CO proceedings as having decided the question of waivers. I understand that the emission standards review was noticed in the Federal Register on April 7, 1981 in accordance with Section 202 of the Clean Air Act. The notice solicited data from applicants and public comments, and scheduled a public hearing.

The Clean Air Act does provide that the decision on waivers be made by the Administrator. I want to assure the Committee that I have not made that decision and, when I am confirmed as Administrator, I will make the decision on the record based upon the

the evidence presented in the rulemaking in accordance with the Clean Air Act. As I am sure the Committee appreciates, on matters pending before the Administrator, it would be inappropriate for me to speak to the merits of particular issues or evidence involved in the proceedings.

3(b) Two of the expressed purposes of the automobile regulatory relief package are to free up capital for investment in new plant and equipment, and to improve U.S. manufacturers'international competitive position. How can some of these changes make any capital available to the auto industry when they only effect emission control equipment supplied by vendors? In addition, there appears to be a serious risk that failing to move ahead on heavy duty truck standards will abandon the market to Japanese manufacturers who will certainly develop the technology to meet world demand for control equipment. Will you examine all such effects on international competition?

I cannot conclude, as your question does, that the relief package will only affect control equipment vendors. However, as in the previous question, the matters of which you inquire are presently pending in a rulemaking action before EPA. All issues raised in the proceeding will be examined in accordance with the Clean Air Act and the Administrative Procedures Act. I am sure you will agree with me that it would be inappropriate to speak to the issues in that action or to comment further at this time.

4. What are your views on the role of the Environmental Protection Agency as an independent agency? How do you see its interrelationship with other agencies and with the Executive Office of the President? How important is direct access to the President and participation on the Cabinet, such as your predecessor enjoyed? How active will you and the Environmental Protection Agency be in the formulation of the Administration's proposals on the Clean Air Act? In what ways do you expect to utilize input from other agencies since the Administrator of EPA has the central decision-making role under the Clean Air Act?

The Environmental Protection Agency is an executive branch agency, having been created by a Presidential Executive Order. As an executive branch agency, it is not "independent" in the sense that the Federal Communications Commission and Interstate Commerce Commission are. EPA is headed by an Administrator who is appointed by the President and serves at his pleasure.

Where Federal law vests authority in the EPA Administrator to make decisions or otherwise act, I shall. However, it is obvious that prudent government and prudent management dictate that within the government a process of consultation and coordination is necessary. President Reagan has assured me that I will be involved personally in all of his environmental decisions. Since my nomination, I have had the opportunity to meet with the President on two occasions and I am confident that I will have direct access to him whenever it is necessary to responsibly fulfill my duties. As President Reagan's appointee, I fully plan to be a member of his team. EPA cannot and will not function in isolation from other executive agencies and departments; just as it cannot and will not function in isolation from Congress and this committee.

And, as the President prepares his message on the Clean Air Act, I and EPA staff will be active participants in that process. President Reagan, in implementing his Cabinet Government, has created the Cabinet Council on Natural Resources and Environment, made up of Cabinet Officers and chaired by the Secretary of the Interior. Since I am not a Cabinet Officer, I will not sit on the Council, but I will be a member of the Council's Work Group on this issue. It will be the job of this group to formulate recommendations which will be forwarded to the President through the Cabinet Council.

I do expect, indeed I will solicit, input from other agencies in making decisions regarding the Clean Air Act. No executive agency or department stands alone. It just makes good sense to have an Administration policy that is internally consistent. Indeed contradictory or self-defeating policies have no place in the final results we will seek.

5. A critical part of all the environmental statutes is EPA's relationship with the States. How do you propose to improve this relationship and support State and local efforts?

We can and must restore the State/Federal partnership envisaged by Congress. We can establish a new era of cooperation and consistency. We can solicit early and substantial state and local input into the regulatory process; return programs to willing and able states, and allow them the flexibility to achieve results in the most effective manner. I am confident we will find that our Federal (and State) dollars can provide far greater protection of public health and the environment when they do not have to be applied unnecessarily to resolve contentious State/Federal confrontations.

6. Do you feel the Environmental Protection Agency should give the States actual technical guidance and aid through research efforts? How can EPA fulfill this role with the budget cuts in the research programs?

Yes. EPA can and should provide substantial technical guidance to the States in carrying out their pollution control responsibilities under the Clean Air Act, the Clean Water Act and other statutes administered by EPA. I don't believe that any of the budget cuts recommended by the Administration will impair EPA's ability to provide technical assistance to the States. To the contrary, I hope to foster a more cooperative, less adversarial relationship between EPA and the States which should help to encourage greater use by the States of EPA's technical assistance.

7. The Administrator plays a large role in the setting of the National Ambient Air Quality Standards. As Administrator, you must determine the "adequate margin of safety." What does this phrase mean to you and how would you implement it?

Please give specific examples of what you feel should be protected under the phrase of "public welfare" in the secondary standards.

I interpret the phrase "margin of safety" to express Congress' emphasis on health effects in setting primary ambient air quality standards and in setting hazardous air pollutant standards under Section 112 where the phrase "margin of safety" is also used. I will, of course, follow the statute and focus my attention on the scientific health evidence.

One of my primary objectives, if I am confirmed, will be to improve the quality of EPA's decision-making on scientific issues. To do this, I intend to place more reliance on the Science Advisory Board, to involve the SAB at an earlier point in the process, to seek the SAB's independent evaluation of the scientific data, and to solicit its advice concerning use of scientific data in setting standards.

"Public Welfare", as that term is used in the Clean Air Act, means non-health effects. These may include effects on crops and vegetation, effects on buildings and materials, and effects on visibility. The term is so clearly defined in Section 302(h) of the

Act that it bears quoting:

"(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being."

8. In the Clean Air Act, the Environmental Protection Agency is given an oversight role with the States having responsibility for implementation plans. Many States do not have the resources to adequately handle this responsibility and, therefore, EPA has in the past given grants to States to help them with the implementation process. Given the proposed budget cuts, what is your position as the adequacy of future State and local control agency support grants, and do you feel these grants are an appropriate means to help the States implement the Clean Air Act?

I think the Clean Air Act's grant program to the States has been highly successful. When the Clean Air Act was passed, Congress envisioned that the States would have primary responsibility for pollution control. But many States lacked trained personnel and expertise to take over immediate responsibility--especially in view of the urgent need for prompt action when the 1970 Clean Air Act was passed.

Since 1970, EPA grants have helped to encourage the development of State programs and to train experienced personnel. Now most States have excellent programs comprised of experienced officials. Grants to the States for FY 82 will continue at the same level as FY 81 under the Reagan budget. By reducing unnecessary program details and the level of controversy between EPA and the States we intend to encourage the States to play a more active role in air pollution control than under previous Administrations.

9. Even in the National Parks and Wilderness areas of the East the view from the exalted peaks and ridges is a precious commodity residents value and tourists come to see. This is surely the case in your home in the West as well. What are your views on the of visibility, especially vistas seen from national interest lands?

There is no question that scenic vistas are an important aesthetic value in certain areas of the country. The Grand Canyon is the classic example. In my home state of Colorado, of course, I grew up appreciating first-hand the majesty of Rocky Mountain peaks. And I know others share this appreciation of scenic views in the East and in states along the Appalachian chain. Protection of visibility in certain areas, therefore, is an important objective under the Clean Air Act. With respect to "vistas seen from national interest lands" (or the concept of "integral vistas"), I am aware that this has been and is a controversial feature of EPA's proposed and final visibility protection regulations. I also am aware that those regulations are now in litigation and are the subject of several pending petitions for reconsideration by EPA, which may not be concluded for several months. In view of these pending proceedings in which, if confirmed, I may have to play a deciding role, I am sure that you would concur that it would be inappropriate to prejudge those petitions and would acknowledge that it would be inappropriate for me to comment any further at this time.

10. What do you believe is EPA's proper role in the protection of wetlands and acquatic ecosystems and the implementation of the program under section 404 of the Clean Water Act?

Under the present law, the Corps of Engineers issues permits under Section 404 of the Clean Water Act. These permits, governing dredge and fill activities, limit and minimize the adverse effects of man's activities on wetlands. EPA is responsible for setting guidelines under Section 404(b) for the Corps to use in permit processing and for reviewing the Corps permits to insure that there is no unacceptable adverse effect on municipal water supplies, shell fish beds and fishing areas (including spawning and breeding areas), wildlife, or recreation areas. If EPA determines a proposed activity would have an "unacceptable adverse effect" on these areas, it may under Section 404(c) veto the Corps permit. Based on information available to me, with respect to the review of Corps permits, this a proper role for EPA.

EPA also may authorize the orderly transfer of the Section 404 program to state agencies. I agree with the Clean Water Act's policy that states should have the primary responsibility for implementing the Act's programs, including the Section 404 program. Unfortunately, as I understand it, no states have assumed total responsibility for the program as it now exists. I believe another proper role of EPA in the administration of Section 404 is to foster the development of states'capabilities to administer their own permit programs. Therefore, when I am confirmed, I will examine the existing program for potential revisions which might be undertaken to make the program more attractive to the States.

11. Last fall the Environmental Protection Agency published an advance notice of proposed rulemaking suggesting a limit on production of chlorofluorocarbons, in order to protect stratospheric ozone. As Administrator would you expect to proceed with future regulation of chlorofluorocarbon production or use?

I intend to study the issue of chlorofluorocarbons carefully when I am confirmed. Until I have completed that review, it would be a mistake to commit EPA to any course of action regarding chlorofluorocarbons.

As I understand it, however, the theory of depletion of the stratospheric ozone layer is highly controversial in the scientific community. Apparently there is a need for additional scientific data before the international scientific community would be willing to accept the ozone layer depletion theory as the basis for additional governmental action. I understand that governments abroad, including the British Department of Environment, have recommended against further action until more research is completed.

In conformance with Congress' will under the Toxic Substances Control Act, aerosol uses of chlorofluorocarbons have already been banned. That action has not been followed by much of the rest of the world.

12. The Fiscal Year 1982 budget proposes elimination of the Federal noise control program. Earlier this year the Agency suspended the noise control regulations for garbage trucks. Our Committee will probably act to repeal EPA's noise control regulatory authority. Whether or not that happens, do you expect to ever reimpose the regulations for garbage trucks?

If the Congress takes away EPA's authority to impose noise control regulations on garbage trucks, it is obvious that EPA would not reimpose the controls. Future control of noise from garbage trucks would then depend upon congressional action rather than EPA action. I can only assume that in suspending the regulations, the EPA chose the course of action it considered to be most appropriate, considering the economic cost and environmental benefits of the regulations and the feasibility of administering the regulations. I have not been advised of any additional information that would indicate that decision should be changed. At this time, I have no plans to change that decision. Certainly, I will consider further guidance from the Congress on this issue.

13. One of the key elements of the Solid Waste Disposal Act is the ban on open dumping and the provisions of Subtitle D requiring States to inventory all open dumps and develop schedules of compliance to eliminate them. (Without a State developed schedule, a non-complying landfill is subject to immediate citizen suit.) States and local governments must have funds to carry out these Federal mandates, and, in fact, the 1980 amendments require a sizeable share of solid waste related funding be provided to States and local governments. Unfortunately, the proposed 1982 budget does not reflect this requirement. What is your view of the role of State and local governments in solid waste management, particularly implementing the ban on open dumping, and what action will you take to carry out the statutory requirement?

I believe that States and local governments should continue their initiatives in addressing solid waste problems and should continue their responsibility for setting priorities and developing control strategies under the Resource Conservation and Recovery Act. One of those areas of control is the closing of open dumps and the upgrading of disposal sites to meet the standards of sanitary landfills. I support the goal of closing open dumps and believe that the States should continue to take the lead in this program. For more than a decade, Federal financial assistance has been provided to the States. This has allowed the States to build staffs with the experience and knowledge to assume, in most instances, responsibility for controlling open dumps.

EPA's Subtitle D regulations establishing criteria for identifying, listing, and controlling open dumps were recently issued. I understand that the first lists of open dumps identified by the States are to be published soon. These actions initiate State proceedings to develop either control or closure plans for each listed dump. Congress, recognizing that this activity was well within the expertise and capabilities of the States, vested the opportunity and responsibility for implementing these plans with the States.

While the President's budget may reduce Federal funds in this area, I do not believe that the change in funding endangers the success of the program. When I am confirmed, I will work with the States to identify the best program for achieving this goal and the timetable for achievement. I don't think we should assume that the necessary financial resources will not be available to allow the States to achieve the goal within a reasonable period of time.

May 1, 1981

SENATOR MOYNIHAN

Questions and Answers

1. **Acid Rain:** (a) Acid rain is an international as well as a national problem. It is an issue that ranks high on the Canadian national agenda, and I believe it should be on our national agenda as well. Would you outline your general views on acid rain as an environmental problem? Would you also specifically comment on the recommendations made by the National Commission on Air Quality concerning atmospheric transport?

I believe that acid rain is an important issue that requires EPA's careful consideration, not only because of concerns expressed by the Canadian Government, but also because of concerns expressed in parts of our own country.

Last year Congress initiated the Interagency Task Force on Acid Precipitation. The efforts of that Task Force when combined and coordinated with research efforts by other scientific groups should provide a sound basis for making policy decisions about acid rain, and I hope that we will be in a position to make those decisions before the ten-year Interagency Task Force program is completed.

I have not yet had an opportunity to study the specific recommendations of the National Commission on Air Quality as they relate to acid rain. If I am confirmed, I will review these recommendations as well as the Commission's other recommendations in light of present scientific knowledge and in conjunction with related work by EPA. I know that your Committee will be giving these matters careful consideration, and I hope that I will have another opportunity during the course of your deliberations to discuss with you my views on these questions.

1. **Acid Rain:** (b) The Administration has requested $9 million for EPA's FY'82 acid rain research program. Only $1.9 million has been requested by the Administration to support the Interagency Task Force on Acid Precipitation (created by Title VII of the Energy Security Act of 1980), which is funded through NOAA. As EPA Administrator and as one of the co-chairmen of the interagency Task Force, how do you intend to coordinate these research efforts? How much of EPA's research budget will be devoted to carrying out the comprehensive acid rain assessment program mandated by Title VII?

Senator Moynihan (2)

Title VII of the Energy Security Act of 1980 established the Interagency Task Force on Acid Precipitation to develop and implement a coordinated National Acid Precipitation Assessment Program. The Task Force has prepared a draft plan which underwent a period for public comment ending April 3.

Under the draft plan, the program will build on existing data and information, both U.S. and foreign, and will be initiating new research. The following are some of the research areas that have been identified with the lead department or agency shown in parentheses:

Natural Sources- (National Oceanic and Atmospheric Administration)
Man-Made Sources- (Department of Energy)
Deposition Monitoring- (Department of the Interior)
Control Technologies- (Environmental Protection Agency)
Terrestrial Impact- (Department of Agriculture)

I can arrange for copies of the draft plan to be forwarded to members of the Environment and Public Works Committee, if it is not already available to you. I am not personally familiar with the details of EPA's large research budget, therefore I cannot respond as to specific allocations.

2. There are many utilities in the Northeast who voluntarily wish to convert to coal. Currently, voluntary coal conversions are subject to different Clean Air Act regulations than mandatory conversions. Would you suggest any changes to the Clean Air Act to facilitate voluntary conversions? If so, what specific changes?

It is my understanding that much remains to be done to encourage coal conversion to achieve the substantial reduction in power plant use of imported oil. It is my further understanding that even mandatory coal conversions have not proceeded at the pace originally contemplated. At this time, the Clear Air Act does treat mandatory coal conversions differently than voluntary coal conversions. The entire coal conversion effort should be reviewed by the Department of Energy and EPA to determine if the current program will in fact help attain the national goal of reduced reliance on imported fuel, and can be accomplished without serious adverse effects on the Nation's air quality. Such an analysis is needed before a final decision is made on amendments to the Clean Air Act. In making such an analysis, the focus should be to identify the best method for reducing oil imports with proper consideration of the environmental effects that might occur following a change in patterns of fuel use.

Senator Moynihan (3)

3. EPA recently completed a voluminous report on Industrial Cost Exclusion, a provision of the law excluding industrial users of publicly owned wastewater treatment plants from receiving Federal construction funds. The report strongly suggests that the savings from Industrial Cost Exclusion may be minimal as a result of increased costs from construction delays. In the Administration's recent proposals on reforming the construction grants program, no mention was made of Industrial Cost Exclusion. Would you recommend changes in the Industrial Cost Exclusion provision of the Clean Water Act?

As I noted in an earlier question from Senator Randolph, it is appropriate for the Committee to examine Industrial Cost Exclusion this year as other parts of Title II of the Clean Water Act are reviewed. I fully expect that by the time this issue is addressed by the Committee, an Administration recommendation will be available.

4. There are several environmental issues which are of particular concern to New York and other States in the Northeast; among these are the implementation of the Superfund law and the development of hazardous waste disposal plans under Subtitle C of the Solid Waste Disposal Act. How do you view EPA's role in enforcing promulgating regulations in each of these areas? What do you think the appropriate Federal/State relationship should be in each of these areas?

It is my understanding that EPA is and has for some time been in the process of developing its strategy for implementing Superfund. P.L. 96-510 contains a number of Congressional directives about the role of the States in implementing that legislation. Similarly, the Solid Waste Disposal Act envisions that States which seek to assume the program under Subtitle C will play certain roles in the administration of that statute, including issuance of permits for treatment, storage and disposal facilities.

With respect to enforcement, the President's Budget includes an increase for enforcement activities for both Superfund and the Solid Waste Disposal Act. This reflects the Administration's commitment to enforcement of these programs.

This Administration will review carefully all of the EPA regulations to ensure that they address the environmental problems presented by hazardous wastes and other hazardous substances in an efficient manner and minimize the administrative burdens on affected industry and other organizations. Because this Administration also supports increased responsibility on the part of the States in setting priorities and developing control programs, if confirmed, I will emphasize working with the States to facilitate their assumption of these responsibilities to the maximum extent contemplated by the statutes.

May 2, 1981

SENATOR BAUCUS

Questions and Answers

1. Since its inception, the Environmental Protection Agency has embodied a decentralized management plan. Delegation of responsibilities has been made to regional offices and, subsequently, to state environmental agencies. Do you favor retention of this system? What modifications do you believe are necessary?

Since its creation, the Environmental Protection Agency has been a leader of decentralized management. Its Regional Offices have been the major communicator of Agency policies and concerns to the States. While this approach to management is good in concept, its application to date has not insured that State/Federal relations have been good. Indeed, some States view their EPA Regional Offices as adversaries not allies.

The following is not exhaustive, but many have observed the inconsistency of policies between Headquarters and regions, from region-to-region, and within regions. This creates significant credibility problems in dealing with the States and exhibits on the part of EPA an inadequate understanding of its own programs and regulations. The result is a seeming insensitivity to local concerns. Because I place such a high priority on building State/Federal partnerships to administer the environmental statutes, I can assure the Committee that this is a matter I will tackle immediately upon assuming the office of Administration. My goal is to make the Regional system work to the benefit of EPA and the States.

In an answer I gave Senator Randolph to an earlier question on this subject, I stated that I want to establish a new era of cooperation with the States. Returning program responsibility to the willing and able States will be a priority of my management of EPA. All of EPA's major programs envisage that the States would have primary responsibility for pollution control. Now many States have excellent programs (especially in air and water pollution control) staffed by experienced of officials. To the extent allowed by statute and in consideration of the capabilities of the States, I want to see these responsibilities returned to the States.

2. The environmental policymaking mechanism of the Reagan Administration has not been articulated. Please describe the degree of autonomy which you believe the Environmental Protection Agency should maintain and the extent to which you believe environmental policy should be coordinated and directed by other agencies, particularly the Department of the Interior?

Senator Randolph asked a similar question. But because this area of inquiry is so important to the Committee's understanding of how I will administer EPA, a restatement of that answer is in order.

The Environmental Protection Agency is an executive branch agency, having been created by a Presidential Executive Order. As an executive branch agency, it is not "independent" in the sense that the Federal Communications Commission and Interstate Commerce Commission are. EPA is headed by an Administrator who is appointed by the President and serves at his pleasure.

Where Federal law vests authority in the EPA Administrator to make decisions or otherwise act, I shall. However, it is obvious that prudent government and prudent management dictate that within the government a process of consultation and coordination is necessary. President Reagan has assured me that I will be involved personally in all of his environmental decisions. Since my nomination, I have had the opportunity to meet with the President on two occasions and I am confident that I will have direct access to him as necessary to responsibly fulfill my duties.

As President Reagan's appointee, I fully plan to be a member of his team. EPA cannot and will not function in isolation from other executive agencies and departments; just as it cannot and will not function in isolation from Congress and this committee. And, as the President prepares his legislative messages on the environment, I and EPA staff will be active participants in that process. President Reagan, in implementing his Cabinet Government, has created the Cabinet Council on Natural Resources and Environment, made up of Cabinet Officers and chaired by the Secretary of the Interior. Since I am not a Cabinet Officer, I will not sit on the Council but I will be a member of the Council's Work Groups involving EPA activities. It will be the job of this group to formulate recommendations which will be forwarded to the President through the Cabinet Council.

I do expect, indeed I will solicit, input from other agencies in making decisions regarding the administration of EPA. No executive agency or department stands alone. It just makes good sense to have Administration policies that are internally consistent. Indeed, contradictory or self-defeating policies have no place in the final results we will seek.

3. The plight of the copper industry in meeting the requirements of the Clean Air Act was recognized in the amendments of 1977 by the establishment of a non-ferrous smelter order (NSO). Regulations promulgated by EPA have essentially strangled the effectiveness of this provision. What course of action do you favor to rectify this situation?

The relationship between the copper smelting industry and the Clean Air Act is a complicated and many-faceted one. The traditional management approach to air pollution control does not translate easily to the copper industry. For example, its facilities tend to be located in hilly, complex terrain where modeling is least accurate.

The 1977 Clean Air Act Amendments incorporated Section 19 which is easing the burden of compliance on the industry. I understand that EPA has encountered difficulty in determining: what conditions should attach to the granting of non-ferrous smelter orders (NSO's), such as control of fugitive emissions, efficient operation of supplemental controls, and general plant efficiency; the relationship of such orders to state attainment; and the economics of individual cases. Further complicating an already complex problem is the fact that displacement of domestic product by imports is increasing. Many smelters seem to be located in dependent communities where they are the single (or at least major) source of employment. To date no non-ferrous smelter orders have been issued.

Notwithstanding the difficulty of EPA's tasks, I am aware of charges that the Agency is not complying with Congressional intent in the administration of Section 19. It would be my intent to investigate these charges and when a determination is made to communicate that determination to you and the other members of the Committee.

4. The freeze placed on the issuance of public information documents by the Administration poses special problems for the Environmental Protection Agency which deals on a daily basis in scientific concepts and technical jargon not readily understood by the public. How do you plan to win public support and understanding for the nation's environmental programs in light of this situation?

I realize that EPA is frequently on the forefront of technology, and anyone dealing in this area is tempted to lapse into technical jargon not readily understood by the public. I will make every effort, as Administrator of EPA, to translate the concepts in which the Agency is dealing into language which the public can reasonably understand. You should recall that I am myself not an engineer, and I will work to assure that the Agency's programs and scientific research are available to and understood by the public. The public and therefore, all media are vitally interested in environmental activities and they will continue to be provided an effective means of communication with the public.

5. The water quality programs administered by EPA and the water projects construction programs administered by the Department of the Interior and the Army Corps of Engineers are budgetary giants of the same magnitude. Historically, however, these efforts have had little in common but their subject matter -- water. Do you favor coordination of water supply and quality programs and policies and, if so, in what form?

Interagency coordination in areas of mutual interest has had, and will continue to have a high priority in the Reagan Administration, particularly with respect to natural resources development, use, conservation and protection. The Cabinet Council on Natural Resources and Environment has coordination of water policy and programmatic activities as one of its responsibilities. Specific tasks, both short-term and ongoing, will be referred to committees and work groups that serve at the request of the Cabinet Council. One such committee that involves EPA, the Department of the Interior, the civil-construction side of the Corps of Engineers, and the Department of Agriculture, has been formed and asked to look at the present functions of the Water Resources Council to determine how they can best be handled in the future.

Each of the construction programs carried on by EPA, the Department of the Interior, and the Corps of Engineers is for a specific purpose, designed to achieve goals that are consistent with the overall missions of the involved agency. All have developed professional staffs that have a high-degree of competence in their own areas of specialization; EPA's water expertise is in the unique field of water quality — a blend of chemistry, biology, hydrology, hydraulics and public health. The Corps of Engineers has assisted in the management and supervision of the contracting and construction of wastewater treatment facilities.

These three agencies of government have a common media where they have mutual, and to a limited extent, overlapping interests but these areas are only part of their many unshared responsibilities. The current approach to coordination through the Cabinet Council will provide the appropriate vehicle for policy coordination between these departments and agencies.

6. EPA appears to have de-emphasized its efforts in regard to radiation -- particularly in regard to local contamination problems from radioactive materials. What role do you envision EPA playing in the protection of the public's health?

As outlined in the President's Budget, the EPA program for radiation in 1981 will concentrate in two areas -- radioactive waste disposal and federal guidance.

The Administrator of EPA is charged with "advis[ing] the President with respect to radiation matters directly or indirectly affecting health, including guidance for all federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with states." EPA's authority to protect the public health and environment from adverse effects of radiation exposure derives from several legislative mandates, including the Atomic Energy Act, the Clean Air Act (1977 Amendments), the Resource Conservation and Recovery Act, the Uranium Mill Tailings Radiation Control Act, the Federal Water Pollution Control Act, and others.

On January 23, EPA published in the Federal Register a revised guidance to Federal agencies for the protection of workers exposed to radiation. The document was open for public comment through April 24. Hearings were held this past month in Washington and are scheduled at several cities around the country beginning next week.

When the Committee confirms me, I can assure you that based on the comments received in written form and at the hearings, the guidance document will be revised as appropriate and presented to the President. Since these activities are in progress, it would be inappropriate for me to comment on my views as to the particular details of the program finally developed by the Agency, for to do so would be to prejudge the record of the proceeding.

It is my understanding that technological support to states and regions in the development, review, and testing of radiological emergency response plans are budgeted to continue throughout FY'82.

7. Growing populations, improved communication and resource development make the interrelationship of worldwide ecosystems more apparent daily. What efforts do you believe should exist within EPA to study environmental laws and regulations of other nations to improve our own system?

It is important for the United States, through EPA, the President's Council on Environmental Quality, and the Department of State in particular, to be well-informed of the environmental laws, regulations and programs of other nations, especially those with large industrial economies and those with large populations. EPA's activities in this regard, of course, must be based on particular needs and must be related to specific statutory authorities and directives. It is my understanding that EPA has participated in many activities in the past ten years to gain a better understanding of global environmental problems, and how they affect and are affected by activities within the United States. Analyses of the possible effects of chlorofluorocarbon emissions on the stratospheric ozone layer and the "greenhouse" effect resulting from increased levels of carbon dioxide are two important examples. To deal with these and other global issues and to be open to possible improvements in our own domestic environmental programs, I believe it is important for EPA to have an understanding of the laws and regulations of other countries. I plan to review EPA's current activities in this regard, and in consultation with CEQ and the State Department, will make whatever changes may be necessary to ensure that appropriate attention is given by EPA to studying the laws and regulations of other nations as they affect the interests of the United States.

8. In a February 21, 1981 interview with the Washington Post, you are quoted as stating that you "absolutely" think that cost-benefit analysis should apply to standards for pollution emissions. Would you describe your position more thoroughly, especially as concerns primary ambient air standards?

I support the use of cost-benefit analysis in setting pollution standards wherever that is permitted by statute. My position is the same as the President's in Executive Order 12291. If cost-benefit analyses are prohibited by statute, I will, of course, abide by Congress' judgment.

As I said in response to Senator Randolph's question, Congress' emphasis in setting primary air quality standards was on public health. I intend to follow Congress' direction in this regard unless and until Congress or the courts dictate otherwise.

For a more detailed statement of my views on this issue please refer to the extensive colloquy I had during the hearing with Senators Domenici and Hart and my answer to Senator Stafford's question number two.

RESPONSES TO QUESTIONS
SUBMITTED AFTER
MAY 1, 1981 HEARINGS

SENATOR STAFFORD'S QUESTIONS

Last year, the Congress passed the so-called "superfund" law. During the course of Senate consideration of this bill, Senator Stafford conveyed to representatives of the American chemical industry his willingness to press for either a "sunset" or repeal of the Toxic Substances Control Act. Of course that offer was made in the context of the bill then before the Senate, S. 1480. Nevertheless, the chemical industry declined to consider repeal of the Toxics law, which it has repeatedly criticizied as an example of the type of excessive regulation which is supposedly crippling American industry.

Similarly, proposals to repeal the Noise Control Act are opposed by the railroad and motor vehicle industries, which repeal of the Highway Beautification Act is opposed by the billboard industry.

Your administration has expressed an opposition to excessive or unnecessary regulation.

Are you personally willing to press for repeal of laws which artificially subsidize or protect industries, even in the face of their opposition? Specifically, do you support repeal of the billboard and noise laws? Would you support a repeal of the toxics laws, to be replaced by a regime of liability and victim compensation?

You are said to be an ardent proponent of including cost-benefit analysis in government regulations. On February 21, 1981, in an article which appeared in the Washington Post you were said to "absolutely believe" that cost-benefit analysis should be used in setting pollution standards.

Could you please state what method you would use for determining the value of human life and health. If you believe there is now a figure appropriate to assign to human life, would you please provide it to the Committee.

If it is your opinion that human life and health can be monatized and thus included within a cost-benefit analysis system, what other intangible values do you think can also be monatized? Specificially, do you believe that any of the following values can and should be monatized: speech; assembly; religion; privacy.

Mrs. Gorsuch, the Committee has received your financial disclosure form and finds it to be in order. For the Record, do you have any financial interests or activities that you believe could impair or compromise your service in the position for which you have been nominated?

Public concern over exposure to toxic chemicals is clearly enormous, and recent research indicates that a large percentage of the public's exposure to these chemicals comes from breathing them in the ambient air. EPA was directed several years ago to establish National Emission Standards for Hazardous Air Pollutants, yet has been very slow to move in this area. With the substantial cutbacks in EPA's R&D Funding requested by the new Administration in mind, can you tell this Committee how you plan to control the problem of hazardous air pollutants during your tenure?

A cost benefit analysis requires a meaningful evaluation of the health-related consequences of any standard which is not set at a level to protect the health of all persons. One of the areas of greatest uncertainty in modern science, is the process of so-called "risk analysis." Do you believe that a minimum level of certainty should be achieved in the performance of risk analyses before you would recommend that Congress enact a cost-benefit process for setting health standards?

If the answer is yes:

What should that level be? Should the Agency be 50%, 80%, or 95% certain that it knows how many people would be adversely affected by a given standard?

If the answer is no:

Would you be willing to invest funds in a program to improve the accuracy of risk assessments?

What level of confidence in the accuracy of risk assessments should we work toward?

Do you have an estimate of what the costs of such a program would be in order to achieve that level of confidence in the accuracy of risk assessments?

The creation and installation of cost-benefit analysis for purposes of decision making defines the point at which two lines -- one representing costs, the other benefits -- cross. If the costs exceed the value of the benefits, further regulation or control is precluded. Yet harm continues to occur. Indeed, that harm is statistically certain of occurence. It is not avoided because the cost of doing so exceeds the value of the benefit.

This obviously raises serious ethical and moral considerations. One party is allowed to injure another merely because the costs of avoiding the injury exceed the monetary value of the harm. Formalizing this system through a system of government sanctions confers, in effect, a right on one party to appropriate the health of another. Setting that question aside, however, there is one other ethical issue: should the party whose injury is statistically certain to occur be compensated. On the one hand, the savings derived from being allowed to injure another inure to the benefit of the polluter. And, by definition, they exceed the value of the injury -- or "benefit" -- which the individual suffers.

Do you believe that the injured party should be made whole by the polluter? If you do not, do you believe that the result of creating such a system is to subsidize pollution by requiring its real costs to be borne by the taxpayers.

May 3, 1981

ANSWERS TO SENATOR STAFFORD'S QUESTIONS

1. The elimination of excessive regulations by all Federal departments and agencies is a priority of President Reagan. I share his commitment to this priority. In some instances, such as regulations issued under the Noise Control Act, Federal regulations preempt State or local regulation and provide uniformity for manufacturers that market products throughout the country. The importance of such uniformity is a factor to be considered in assessing the overall impact of eliminating any particular area of regulation. In my answer to a question submitted by Senator Baker, I discussed the preemption provisions of the Noise Control Act and that discussion is applicable here. With respect to the billboard issue, that law is not administered by EPA. The Administration's efforts regarding changes in that law will be the responsibility of other federal officials, not the Administrator of EPA.

The question of repealing the Toxic Substances Control Act (TSCA) in favor of a regime of liability and victim compensation is a separate issue from the question of Federal preemption of state and local regulations. The effectiveness of the statutory scheme in TSCA, and EPA's implementation of that Act, is an issue which I plan to review, along with other EPA programs, following my confirmation.

One aspect of that review will be to assess the extent to which the Act and EPA's administration of it have had unwarranted adverse affects on industry, labor, the consuming public, and environmental goals -- if at all. Certainly, it would be inappropriate to prejudge that issue. Likewise, it would be inappropriate, at this time, to take a position regarding the possible repeal of that statute, in favor of a separate liability and victim compensation scheme or for any other reason. On that issue, however, I am aware that Congress rejected a Federal tort liability scheme when it passed Superfund last year. It also authorized an extensive study of the adequacy of existing federal and state statutory and common law remedies to compensate victims. The results of that study should be included in any future considerations of changes in the Federal approach to control of toxic substances.

2. During an extensive colloquy on this issue with Senators Domenici and Hart, I discussed my views on cost-benefit analysis. However, I would be pleased to restate my position. I support the use of cost-benefit analysis in setting pollution control regulations and standards whenever that is permitted by statute. That does not mean, however, that we must, or can, put a dollar value on human life or breath. Like the other freedoms that you mention, e.g., speech, assembly, religion, and privacy, human life itself is incapable of being translated into monetary terms.

Cost-benefit principles nonetheless have direct application to setting pollution control standards. Our society has only finite resources that can be devoted to any purpose. The aim of my Administration of EPA will be to ensure that those resources are allocated in the most cost-effective manner possible. In order to do this we must know what benefits our regulatory actions will achieve and at what cost. Indeed unless we try to learn the answers to these questions and to compare the relative costs and benefits of alternative regulatory responses we will be less able to identify alternatives that provide an equal or greater degree of health protection for the same expenditure of public or private resources. Only when we know what environmental progress we can achieve at what cost, can we regulate in a manner that will efficiently achieve our mutual objectives.

3. My financial disclosure form speaks for itself. More generally, however, I am not aware of anything which will impair or compromise my ability to serve.

4. EPA has issued hazardous air pollution standards for asbestos, beryllium, mercury and vinyl chloride. Three other substances, arsenic, benzene and radionuclides have been listed for consideration under Section 112 of the Clean Air Act. In addition, EPA proposed a generic approach to carcinogen control under Section 112. I have no reason to believe that the budget proposal will significantly affect the reviews undertaken under Section 112.

5. The long question you pose does not permit me to clearly understand the precise nature of your inquiry. In an effort to be responsive, I interpret that your inquiry is directed to whether I consider it appropriate to use risk analysis (or assessment) in setting environmental standards. My own view is not so important as is the endorsement given this technique by much higher authorities. Risk assessment was specifically endorsed by the U.S. Supreme Court in the "Benzene Case" (Industrial Union Department v. American Petroleum Institute). The Supreme Court said that risk assessment is an appropriate means of evaluating health benefits to be achieved by taking specific action. Congress specifically contemplated use of risk assessment in the Toxic Substances Control Act and the Federal Insecticide, Fungicide and Rodenticide Act by requiring the Administrator to make determinations of "unreasonable risk". Other statutes, such as the Safe Drinking Water Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act permit its use. Setting effective standards for health protection is a difficult task, and, as is evidenced by Congress' enactments, every credible technique, including risk assessment, should be available to the decision-maker.

6. Yes, in general, our country has relied upon the judicial system to provide compensation to persons entitled to recovery under common law or statutory tort law, and I support that concept. By contrast, our environmental statutes are preventive in nature in the sense that they seek to minimize any effects adverse to public health and

welfare that accompany economic activity. As I have stated in responses to previous questions, cost-benefit analysis is an excellent means of insuring that we achieve the greatest net benefits, and have the greatest health and welfare protection, for the dollars we spend on pollution control.

The questions that you raise concerning compensation of persons injured by pollution are, of course, complex. In the Comprehensive Environmental Response, Compensation and Liability Act enacted last year, Congress called for a report on the adequacy of existing common law and statutory remedies for redress from harm to environment and human health. As the study is due on December 11, 1981, I want to await its findings and then incorporate them into my own thought process and not prejudge the issues to which the study speaks. I appreciate your concern Senator, and look forward to personally discussing it with you in the coming months.

SENATOR BAKER'S QUESTIONS

TRANSITION: How do you plan to achieve an orderly transition to new management staff at EPA? Will career Senior Executive Service employees be allowed to remain in their current jobs or do you have plans to move such employees to other jobs?

RESEARCH: What is your view on the need for research at EPA, especially in view of the requirement for supporting information for standard setters? Do you plan to make significant changes in the research program at EPA? What will be the thrust of these activities?

ACID RAIN: Do you foresee an expansion of the current EPA program for acid rain? Will the current program be pursued or do you see a shift in emphasis on the acid rain work?

NOISE: The Noise Regulatory program at EPA has been criticized and there are proposals to significantly reduce this program. What is your reaction to such proposals; do you favor the preemption provisions of the current noise regulations?

STATE PROGRAMS: This Administration has indicated a desire to move more government programs into the States. Will you suggest significant changes at EPA to move more programs to the States and if so, what programs in particular do you have in mind?

SUPERFUND: The Superfund legislation calls for the Department of Health and Human Services to complete health studies and make health determinations at hazardous waste sites handled under Superfund. How do you propose to work with the Department of Health and Human Services to ensure that the health provisions delegated to HHS under Superfund are implemented on a timely basis?

May 3, 1981

ANSWERS TO SENATOR BAKER'S QUESTIONS

1. TRANSITION: When I am confirmed, I want to work with the President and his personnel staff to ensure the early nomination of a team of imminently qualified Assistant Administrators and other staff at EPA. Since I have not been at EPA, I have not been in a position to observe or evaluate the current allocation of personnel, therefore no decisions have been made regarding assignments of career Senior Executive Service employees. I will want to see that the many talented and dedicated public servants employed at EPA are assigned to tasks which will make the best use of their talents and expertise.

2. RESEARCH: Research is vital to the effective functioning of EPA. If the scientific community respects the quality of the scientific and technical data on which regulations are based, and if that data is relied upon in developing regulations, then the regulations themselves will have greater credibility and acceptance.

I am fortunate to have Dr. John Hernandez designated to be Deputy Administrator. He has the scientific and technical experience to be helpful in identifying improvements.

Together, we intend to make certain that regulatory rules, standards and decisions are formulated on the basis of the highest quality of scientific evidence possible. If conclusive evidence is lacking, decisions will be based on the best scientific judgment available.

Quality assurance practices will be strengthened to improve the reliability of data, regardless of whether it originated within EPA or externally through contracts and cooperative agreements. Early peer review will be an integral part of the process.

We will hire the most qualified scientists and technical experts this Administration can attract, to supplement some of the excellent career scientists and technical experts at EPA.

We will try to solicit the top scientific competence in contracting for extramural research.

We will strive to improve our projection of the long-term scientific and technical research needs.

We will look forward to discussing with interested Members of Congress, the improvements we can make, the needs we discover, and the stumbling blocks which may occur that impair our efforts in improving and utilizing high quality research.

3. ACID RAIN: Until I have had an opportunity to study the information which has been developed to date on the acid rain question, it would be premature for me to take a position on whether to expand the current EPA program or to suggest any changes in direction. As I stated in response to Senator Moynihan's question, however, I agree that the issue is important and hope that, working through the Interagency Task Force on Acid Precipitation, we will be able to generate sufficient information to make rational decisions on what future actions might be pursued.

4. NOISE: The President's Budget Message recommends continued funding of the Federal Noise Control regulatory program through Fiscal Year 1982. As part of the President's program to eliminate excess Federal regulation, he has proposed that there be no funds available in future fiscal years to establish Federal regulations controlling noise emissions on additional products. Existing noise regulations would not be affected by the President's budget proposal.

Provisions of the current Noise Control Act prevent states and local governments from imposing more stringent noise emission controls on new products subject to Federal regulations. As part of the President's regulatory reform program and Executive Order 12291, EPA's existing noise control regulations will be reviewed to determine if any modification in those regulations is warranted. That review will be conducted in accordance with the Administrative Procedures Act and other applicable procedural requirements. Among the issues raised as part of that review it is highly predictable that the impact of the Act's preemption provision will be raised.

At this time, it is premature to comment on the extent to which the preemptive aspect of the existing regulations will affect the results of the review of those regulations.

While the President has made no recommendations regarding legislative changes in the Noise Control Act, Senator Randolph indicated in a written question submitted to me that the Environment and Public Works Committee probably would vote to repeal EPA's noise control regulatory authority when it considers reauthorization of the Noise Control Act. The effect of the preemption provisions of the Act and the effect of the existing EPA noise regulations will presumably be one of the issues considered by the Committee. Any future actions on EPA's existing noise regulations therefore will be determined by the Congress' ultimate action regarding the future of the EPA's noise control program.

5. STATE PROGRAMS: I support fully the Administration's policy of placing greater responsibility at State and local levels of government. I plan to initiate a thorough review of EPA programs to determine which of these programs can be carried out more effectively at state and local levels, and will encourage states and localities to assume those responsibilities wherever possible, consistent with the laws I am charged with administering. This, of course, furthers Congress' own directive that states have the primary responsibility for implementing environmental programs.

Among the Agency programs, I will examine the criteria for approval of state-administered federal air, water, hazardous waste, and underground injection permit programs, with a view towards greater "delegation" of permit responsibilities to the states. I also plan to review carefully the Clean Water Act pretreatment program, and will consider ways to increase state and local responsibility for the development of pretreatment requirements. I also plan to review ways in which states can be afforded maximum flexibility under Clean Air Act state implementation plans to approve the use of the "bubble" policy and other innovative, cost-effective alternative control options. I plan to consult regularly with state and local officials to help determine which programs they feel can be carried out more effectively at state and local levels.

6. SUPERFUND: Implementation of the new superfund legislation will require action by and coordination among a number of Federal departments and agencies. The initial allocation of responsibility has been made by Executive Order and the President is currently considering whether adjustments in those assignments of responsibility should be made. EPA will have a major role in use of the broad response authority provided by the legislation and will work closely with the other Federal offices to insure maximum coordination and cooperation. In the development of the EPA strategy for implementing its obligations under Superfund, including the revisions of the National Contingency Plan which utilizes the resources of numerous Federal offices, EPA will consult with those other Federal offices to identify the actions each will undertake.

The Department of Health and Human Services has an important role to play in the overall implementation of the legislation so there should be close consultation between the staffs of EPA and HHS (I am informed that preliminary meetings have taken place) in the development of the plans for implementation as well as during any specific incident requiring use of the statutory authority.

QUESTION BY SENATOR CHAFEE

1. Since you were nominated to be Administrator eight weeks ago there have been many press reports about the approach that you will take to managing the EPA. Now that we have heard from the press, what do you see as the priority management issues at EPA? Does this maintain the necessary stability in these programs so that no program is turned upside down? Will you choose your own Assitant Administrators or will they be chosen for you by the Task Force on Natural Resources and the Environment?

May 3, 1981

ANSWERS TO SENATOR CHAFEE'S QUESTIONS

I intend to work with the President and his staff to ensure the early naming of highly qualified Assistant Administrators. Neither I, nor the "Task Force on Natural Resources and the Environment" have the authority to choose the Assistant Administrators; the President alone has that authority.

My thoughts as to management priorities are as follows: I intend to assure that Regional Administrators will provide genuine assistance and cooperation to the states they serve. I am confident that a cooperative and consistent working relationship with the states will encourage the development of the State/Federal partnership that Congress originally envisioned; further I intend to develop a management program that utilizes these individuals and the highly capable civil service professionals at EPA, to more efficiently and successfully protect the public health, welfare and environment. My objective, of course, is not to turn the programs of EPA "upside down", but I will certainly make whatever management changes are necessary to efficiently, expeditiously, and intelligently protect the public health and environment in a manner which is, to the extent permitted by law, in accordance with other national objectives.

Other management issues at EPA include:

- evaluating and, if necessary, making process changes so that intermedia effects are given meaningful consideration in rules and regulations;
- making rules and regulations more understandable to the general public;
- improving the scientific and technical basis for standards, and more fully utilizing peer review earlier in the process;
- developing early and substantial state and local input into the regulatory process, and returning programs to willing and able states as Congress intended;
- simplifying and streamlining the regulatory process;
- coordinating the effective attainment of our Nation's environmental objectives as prescribed by law.

SENATOR DOMENICI'S QUESTIONS

1. There has been quite a great deal of discussion regarding the need for a better peer review process within the Agency. In the last Congress this surfaced during the Love Canal tragedy and the issuance of several studies that had not been adequately reviewed. The question will again surface in this Congress during debate on the standard-setting process under the Clean Air Act. Do you believe that this is a legitimate concern and one that the Agency should consider? If so, do you presently have any ideas on how the process could be strengthened?

2. A continual complaint of the States has been a lack of coordination and communication with EPA. The Regional Offices' role is to bridge the gap between EPA Washington and the States. However, I question whether those offices have adequately fulfilled that role. Have you considered ways in which the Regional Offices could more properly serve in that capacity?

3. A mandate of the new Administration is to turn more programs over to the States. A concern in the past about States undertaking environmental programs was over a lack of adequate trained personnel on the State level. My own perception is that our State Environmental Divisions on the whole are more equipped now than 10 years ago. Is that your perception? Furthermore, how strong of a role should EPA training programs take in the future?

3. Mr. Chairman, I have one other question regarding a policy position adopted by the National Commission on Air Quality which is a multi-part question. I would like to submit this question for the record.

May 3, 1981

ANSWERS TO SENATOR DOMENICI'S QUESTIONS

1. Yes. One of the major theme's of my Administration of EPA will be to improve the scientific basis of EPA decision-making. We will base our decisions, wherever possible, on scientific data that have withstood scientific peer review. We intend to place more reliance on the Science Advisory Board (SAB), to involve the SAB at an earlier point in the process, to seek the SAB's independent evaluation of the scientific data, and to solicit its advice concerning use of scientific data in setting standards.

2. There is a need for significant improvement in the manner in which EPA's regional offices operate. I will expect Regional Administrators to provide genuine assistance and cooperation to the states they serve. I am confident that a cooperative and consistent working relationship with the states will encourage the development of the State/Federal partnership that Congress originally envisioned.

I expect that the regional offices will serve an increasingly important role in encouraging early and substantial state and local input into the regulatory process; in developing environmentally beneficial alternatives that allow sufficient flexibility and preferences in programs to achieve our mutual goals; and in identifying those elements which will encourage willing and able states to assume primary responsibility for implementing environmental programs.

3. I agree completely. As I said in response to a question from Senator Randolph, the state pollution control agencies have made great strides since 1970 and, in most instances, are able to assume the responsibility for the programs which Congress originally envisioned. Grants to the states for FY 82 will continue at the same level as FY 81 so I anticipate no problem in our ability to encourage and promote still further improvement in state programs. I am aware that EPA conducts training for all of its media programs. I will want to review the adequacy and need for present training activities to insure they meet the needs of the Agency and the states.

QUESTIONS FOR MS. GORSUCH REGARDING EPA POLICY TOWARD INDIAN TRIBES

1. At the confirmation hearing for Secretary Watt of the Department of the Interior, I asked him whether he was aware of certain positions President Reagan took while a candidate for office regarding the Indians of this country, their resources and their rights. Specifically, the President supported Indian self-determination; he recognized the special status of the Indians and their lands and resources; and he supported tribal governments and their rights to control their resources. Secretary Watt testified that he did undertand these positions of the Reagan administration and that he fully supported that position. My question to you is, are you aware of these positions of the President and, if confirmed as Administrator of EPA, will you support these positions.

2. In the closing days of the Carter administration, the Deputy Administrator of the EPA issued a Policy for Program Administration on American Indian Reservations. In explanation of the reason for development of this policy paper, the paper noted the unique legal status of reservation lands and the corresponding short-fall in state authorities; it recognized the fundamental legal jurisdiction of tribes to regulate pollution sources on reservations; and it noted that the environment is generally best protected by those who have the concern and the ability to protect it. The policy paper comitted the EPA to work with the tribes in implementing and enforcing pollution control programs. I would like to submit a copy of this Policy statement for the record. My question, Ms. Gorsuch, is this: Will you, as Administrator of EPA, support a similar policy toward the Indian tribes? If so, I would appreciate it if you would supply this committee with an outline of the steps you will take to implement the policy.

The National Commission on Air Quality has agreed that tribes should play a more direct role in regulating reservation air quality and recommended four amendments to the Clean Air Act. They are:

a) The Act should be amended to identify explicity the authorities of Indian tribes and EPA under the Act. The Environmental Protection Agency should have authority over all existing and proposed sources within Indian reservations and should be authorized to delegate, when requested and approved, appropriate responsibilities to Indian tribes.

b) Indian tribes should have the opportunity to develop their own reservation regulatory program to manage air quality, with sufficient mechanisms to ensure coordination with adjacent state air quality management programs.

c) Indian tribes should be eligible for Section 105 grants for planning, enforcement, and training programs.[1]

d) The Environmental Protection Agency, on conjunction with the Department of the Interior, should promulgate regulations for the establishment of reservation air quality programs. The regulations should authorize inter-tribal programs, when appropriate, to allow economies in management and technical expertise among neighboring reservations.

Are you in general agreement with these recommendations?

If not in agreement or no comment, how soon can the Committee receive your position with respect to each of these proposed recommendations?

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[1] Tribes are now eligible for 105 grants as local planning agencies. This recommendation not really necessary.

ANSWERS TO SENATOR DOMENICI'S QUESTIONS REGARDING EPA POLICY TOWARD INDIAN TRIBES

1. I understand the positions the President has taken regarding Indian rights and certainly support the President's positions.

2. I have reviewed the Agency's policy paper for Program Administration on American Indian Reservations, but have not had the opportunity to study it carefully or assess it in light of all the Agency's programs. This study must occur before any determination is made as to whether policy changes are needed. I hope to be able to counsel with you on this subject at an appropriate future time. As I said in my prepared statement, I believe that the level of government closest to the point of control is best suited to understand the needs of its citizens and to implement environmental policies that affect these citizens. I believe this approach is sound.

3. I will need to review and study the recommendations of the National Commission on Air Quality, and would appreciate the opportunity to do so before specifically addressing the recommendations. As Vice President Bush has announced, it is our hope that the Administration's proposed Clean Air Act amendments will be forwarded to the Congress by June 30, 1981. As a member of the President's Cabinet Council Work Group on this issue, I will bring these recommendations to the attention of that body, and I am confident that the Work Group will give them appropriate consideration and study.

May 1, 1981

QUESTIONS FOR ANNE GORSUCH - FROM SENATOR SIMPSON

Mrs. Gorsuch:

1. In the past, toxicants have been used as a tool for controlling livestock predation. Will your agency support the selective use of toxicants to control predation by coyotes? Does your Agency plan to approve the experimental use permit applied for by the University of Wyoming Animal Science Division (allowing experimentation with compound 1080 in a limited coyote control program)?

2. Vital water projects in the west have been subjected to extensive delays due to federal regulation. EPA regulations are not the only source of delay because other agencies are involved, to a large extent. Nevertheless, are there any proposals or initiatives which you have in mind which would reduce the amount of time required to permit projects?

As a specific example of difficulty in obtaining permission for a water project, the Cheyenne,,Wyoming State II Project was forced to justify to the EPA its proposed diversion capacity for water rights which had already been purchased. Do you believe that it is proper for the EPA to question water rights which are fully vested under state law and involve nonreserved waters?

May 3, 1981

ANSWERS TO SENATOR SIMPSON'S QUESTIONS

1. Because deciding the question of whether to allow selective use of toxicants to control predation by coyotes may involve exercising an adjudicatory role, I am sure you would concur that any conclusions drawn in advance of the full procedure prescribed by law would be inappropriate.

I can assure you that I will review all relevant data with an open mind, and will carefully consider all evidence adduced in arriving at a decision.

If confirmed, I will certainly review the University of Wyoming's experimental use permit application.

2. I am familiar with the importance of water rights in the West, and with the concern over the impact of water quality requirements on the right to the use of water, and am also aware that Senator Wallop sponsored specific language on this subject in the 1977 Amendments. Senator Wallop's effort resulted in Section 101(g).

I am also aware that there is concern over the manner in which EPA has interpreted Section 101(g). As you undoubtedly know, litigation is pending which touches upon this so-called water quantity/water quality issue. Although I have not had an opportunity to study this issue, once confirmed, I do plan to review this matter of utmost importance to Westerners, to ensure that EPA's actions conform with Congressional intent.

SENATOR ABDNOR'S QUESTIONS

1) In the past, EPA's relationship with the states has been viewed by some as less than cooperative. Do you feel there is room for improvement and, if so, how, in your role as EPA Administrator, do you plan to encourage a more productive relationship?

2) During your service in the Colorado state legislature, I understand you drafted an emissions inspection and maintenance measure. Through your involvement with this issue what insights did you gain which might assist you in your new position as EPA Administrator?

3) Do you believe that more workable, cost-effective methods for meeting our environmental standards can be developed administratively?

4) In view of current proposals to reduce federal assistance to the states, how, in your role as EPA Administrator, will you assist small communities in meeting environmental standards?

5) Do you feel there are problems involved in attempting to write detailed national environmental standards and requirements to be applied arbitrarily in every instance? One example where the folly of arbitrary requirements has been apparent in South Dakota, involves the community of Buffalo which was chastised by the regional office of EPA for not regularly submitting a sample of its wastewater effluent when in fact the community is so small that its sewage lagoon contains all the sewage it generates and it has no effluent discharge.

6) Given your experience with air quality issues, what are your views on the relative difference of scrubbing high versus low sulfur coal?

May 3, 1981

ANSWERS TO SENATOR ABDNOR'S QUESTIONS

1. I agree that there is room for substantial improvement in EPA's relationship with the States. I intend to foster a more cooperative, less adversarial relationship with state pollution control agencies when I become EPA Administrator. I hope to accomplish this by relying more heavily on the expertise of state agencies, which in most instances are fully capable of assuming the primary responsibility for pollution control assigned to the states by Congress under most of our pollution control statutes.

2. I am acutely aware of the need for a true Federal-state partnership in policy-making as well as policy implementation. While the EPA's invovlvement with the Colorado emissions inspection and maintenance program was not helpful from the state's perspective, it did show me that, without question, early and constant contact with appropriate state officials is mandatory if the Agency is to gain and keep the respect and cooperation of state governments. I would plan, when confirmed, to open these lines of communication at all levels of the Environmental Protection Agency. I want to make sure that EPA, both its headquarters and regional staffs, speak to States in clear and consistent ways. As I have tesitified to the Committee, I prefer to work with the States through offering incentives for the assumption of environmental control responsibilities rather than invoking sanctions against the States when State/Federal differences appear.

3. Yes. Too often in the past, EPA has relied upon rigid regulations when other, more flexible approaches, might have been more effective. When I become Administrator, I intend to take steps to assure that EPA regulations are cost-effective and where appropriate and permitted by law, consider alternative approaches to those presented by current regulations.

4. As the President has stated to the Congress, reduced Federal appropriations for State grants does not mean necessarily that assistance to the States will be diminished. Economies that will be realized by reducing red tape and administrative costs should result, for many programs, in state assistance continuing at a level commensurate with previous years.

The President's Budget for EPA continues state program grants at levels equal to or greater than those of last year. With respect to the construction grants program, recommended eligibility changes should enable states to make funding available to solve compliance related problems through adoption of their priority lists for funding. The President's legislative recommendations for the construction grants program, in my opinion, will result in greater state control and authority to direct the Federal grants to areas of real water quality needs. I believe that by returning control of this program to the states we can insure that small communities have access to Federal financial assistance.

5. I certainly feel that the arbitrary application of detailed national environmental standards in every instance can give rise to anomalies, and is to be guarded against. I share the President's commitments on the subject of regulatory reform and the selection of least-costly options consistent with statutory mandates. Where the imposition of detailed national standards would violate the Administration's regulatory approach, I will certainly require a prompt reexamination of the requirements and appropriate readjustment of these requirements as necessary. Your example in Buffalo, South Dakota, can be a good example to use in pressing for the reforms many regulatory programs require.

6. As you know, this was one of the most controversial issues that the previous Administration of EPA was forced to address. Last Wednesday, the Court of Appeals upheld the Sliding Scale approach adopted by EPA. Although I have not studied the mammoth, 260-page opinion issued by the Court, the Court's action should resolve the legality of the approach taken by the Agency. However, under the President's recent Executive Order 12291, these regulations, like all others, will be reviewed from time to time.

Stack gas cleaning equipment may achieve different levels of sulfur dioxide emissions depending on the sulfur content of the coal being burned. The overall cost of control may also be different. These issues will be considered in any review of these emission control regulations in accordance with the President's Executive Order. In addition, this is an issue Congress may want to address in the Clean Air Act reauthorization.

SENATOR GORTON'S QUESTIONS

One common complaint of many American industries is that they are being hampered by excessive regulation. President Reagan has pledged to eliminate those regulations where possible and desirable.

One area of regulation which was vested in the States until 1976 -- apparently without major permanent damage to the human environment -- was noise control. We now have a Federal noise control act, but it is among those which was targeted for repeal in President Reagan's budget. The budget said -- and I quote --

> "...the function of noise control can be adequately carried out at the State and local level without the presence of a Federal program."

Shortly after that statement, some industries began opposing repeal of the noise program. These are said to include the railroad, trucking and motor vehicle industries. They oppose repeal because the Federal law preempts states -- as long as it remains on the books States are barred from regulating railroad and trucking noise.

Do you think protection of those industries is a good enough reason for the Administration to go back on its word and keep the Federal noise law on the books?

May 3, 1931

ANSWERS TO SENATOR GORTON'S QUESTION

The President has included in his program to reduce excessive Federal regulation the phase out of the Federal noise control regulatory program now administered by EPA under the Noise Control Act. One aspect of that law is to preempt states and localities from setting more stringent noise emission limits on products for which Federal noise standards have been promulgated. He has proposed that there be no funds available after Fiscal Year 1982 to establish Federal regulations controlling noise emissions on additional products. Existing noise regulations would not be affected by the President's budget proposal. As I indicated in greater detail in my answer to a similar question presented by Senator Baker, the effect of the preemption provision of the Noise Control Act, as it applies to existing EPA noise regulations, may be one of the issues raised during EPA's review of current regulations and by the Congress when it considers reauthorization of the Noise Control Act. Until those reviews are undertaken, it is premature to state whether the preemptive aspect of the regulations is an adequate reason to maintain some level of Federal control on the products now subject to regulation.

QUESTIONS BY SENATOR JENNINGS RANDOLPH
ANNE GORSUCH-FOR THE RECORD
MAY 1, 1981

1. One of the most valuable aspects of the primary ambient air quality standards is that they are intended to protect the health of suseptable populations, not just the healthy. They are to protect the aged, infants, and those with respratory problems. I have heard that perhaps you have expressed the view that these large groups need not be protected by air quality standards. What is your view of the people whose health should be protected by primary air quality standards?

2. The 1977 Clean Air Act amendments provide sanctions on Federal highway and sewage treatment grant funds and a ban on new construction to encourage timely governmental response on critical matters like vehicle inspection and maintenance programs. Those sanctions seem to have been effective. We may need to consider sanctions as a part of the next round of implementation planned revisions. If those sanctions are discretionary with the Administrator, what would be your view of when you would impose them?

3. The nation urgently needs increased hazardous waste disposal capacity meeting Federal standards. We need to issue permits for as many adequate facilities as possible, as soon as possible. With that in mind, I have two questions for you:

   First, to obtain permits as quickly as possible it is imperative that States be involved in wiritng the permits. The State often has a strong economic incentive to make hazardous waste disposal facilities available. I understand you chaired a Colorado legislative committee which recommended eliminating the State government completely from the permitting of such facilities. How does that comport with the need for adequate permitted facilities?

Second, I have heard all the hazardous waste program regulations are being opened for review. With the delay resulting from that review, when can we expect the first permits to be issued? Can we have your commitment to see that the hazardous waste regulations are in place at the earliest possible time?

4. On this Committee we have tried to take the long view, to anticipate issues, and not just focus on the problems at hand. One such long-range issue which has begun to concern us is the world-wide build-up of carbon dioxide in the atmosphere from fossil fuel burning, and its effect on world climate. Could you share your views on this problem, and its implications?

5. You are aware of this Committee's responsibilities for developing legislation which strikes the proper balance between protecting our air and water while allowing increased use of coal and other alternatives to imported oil. It so happens that a coal company in my home state (Holly Grove) has before EPA a water discharge permit application to surface mine in the Little Kanawka Basin. Because of ongoing litigation in the case, I would ask you only to consider the energy and environmental trade-off which this permit decision must resolve and report back to the Committee on the way EPA should approach the balancing of these national goals in making a proper regulatory decision.

6. In late January of this year the U.S. Regulatory Council released a report concluding that problems from overlapping and inconsistant regulation between federal and state agencies are making it impossible for some small coal operators to survive. There are approximately 800 independent operators in the East, who own small mines employing 100 to 150 miners each. What do you intend to do as EPA Administrator to help assure that this important segment of Appalachia's economy will remain viable?

May 3, 1981

ANSWERS TO SENATOR RANDOLPH'S QUESTIONS

1. Senator, I am sure that at various times in your career, you too have been misquoted by unnamed sources. Such mischaracterization of statements made or assumed to have been made places a disturbing and unnecessary burden on dedicated public servants and does a disservice to the American people, as I am sure you yourself appreciate.

I have never made such a statement. Primary ambient air quality standards are designed to protect public health. The public whose health must be protected includes, among others, the aged, infants, and those with respiratory problems.

2. For my views on sanctions, please refer to my colloquy with Senator Hart. I would make all such decisions, on a case by case basis, in accord with the discretionary powers set forth in the statute.

3. Your understanding is not correct. The legislative committee which I chaired recommended that the county health departments (Colorado counties are creations of the State with only those powers granted to them by State Statute) have the responsibility for making decisions regarding the siting of hazardous waste disposal facilities. Furthermore, because of the disincentives involved, it was concluded by a 9 to 0 vote of the Committee, that neither the people of Colorado nor their environment would be better served by interjecting the State in the "permitting" of hazardous waste facilities at that time. I am not aware that all the hazardous waste program regulations are being opened for review except that review which is provided for all federal regulations by the President's Executive Order 12291. I am also not aware of any regulations review which would delay the issuance of permits. I do not know when EPA will issue its first permit, but I do understand that some elements of the hazardous waste program regulations are pending finalization. When I am confirmed, I will want to examine this program to insure that all necessary elements are in place as promptly as possible to minimize delays which would result in or exacerbate environmental problems.

4. The problem to which you refer is popularly called the "greenhouse effect." Our government has cooperated, and will continue to cooperate, with other nations and international scientific bodies to define the problem, its effect, and, if required, its solution. Certainly this approach will have my support.

5. Thank you for calling this matter to my attention. I will review the permit application, if necessary, at the appropriate time. When Congress reviews the Clean Water Act, I will look forward to discussing with members of this Committee, how the statute should deal with the question of balancing important national goals including those to which you refer.

Senator Randolph
Page 2 of 2
May 3, 1981

6. In my testimony to the Committee, I spoke to what I want to make a priority goal of my administration of EPA -- that is the building of State/Federal partnerships and meaningful regulatory reform. We need to avoid inconsistent regulations and enhance a shared commitment to efficient and effective environmental decision-making. I believe this new Federalism will go a long way toward contributing to viable economies in areas such as Appalachia.

Question from Senator Burdick for Ann Gorsuch

--I understand the headquarters at EPA is going to have a reorganization which may involve reductions in force. Do you intend to observe the statutory rights of vetrans in this reorganization?

May 3, 1981

ANSWERS TO SENATOR BURDICK'S QUESTION

I have made no decisions respecting reorganization of any units at EPA. However, with respect to the broader issue implicit in your question, you can be certain that all personnel decisions during my administration will be in full accordance with applicable Federal personnel requirements, including those involving veterans.

ROBERT T. STAFFORD, VT., CHAIRMAN
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United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, D.C. 20510

May 1, 1981

Honorable Robert Stafford, Chairman
Environment and Public Works Committee
United States Senate
Washington, D. C. 20510

Dear Bob:

In that I was unable to remain at today's hearing on the nomination of Mrs. Anne Gorsuch as Administrator of the Environmental Protection Agency, I greatly appreciate the opportunity to submit questions for her written response.

Accordingly, I have attached a list of questions which supplement those submitted on April 22, 1981 by Senators Randolph, Moynihan and me. I believe that it is important for the responses to these questions to be received before the Committee act on the nomination.

In addition, I am submitting questions on behalf of Congressman Ike Andrews. I would appreciate having Mrs. Gorsuch provide a copy of her responses to these questions to Congressman Andrews as well as the Committee.

Thank you for your assistance in this matter.

With best personal regards, I am

Sincerely,

Max Baucus

ADDITIONAL QUESTIONS BY SENATOR MAX BAUCUS

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE: HEARING ON THE NOMINATION OF MRS. ANNE GORSUCH
MAY 1, 1981

1. In your prepared statement, you indicate that your guiding credo will be that "EPA must be non-confrontational in its approach, leading by action and encouragement." In light of the inevitable conflict which will arise in this or any other administration between the need to encourage economic growth and development and the equally pressing need to protect environmental values, please describe the role which you believe the Administrator of EPA should play.

2. What time schedule do you anticipate the Administration will follow in providing its recommendations for the reauthorization of the Clean Air Act?

3. Please describe the type of public involvement program which you see as being necessary in carrying out EPA's responsibilities under the Superfund legislation.

4. Under both the Carter and the Reagan budgets, funding at the level of $410,000 has been recommended for completion of the Flathead River Basin Study in northwest Montana. This will allow for successful completion of the last year of this five year study. Have you had an opportunity to review this program and do you anticipate any problems arising in the funding of this study?

5. Do you believe that the federal regulatory program under the Noise Control Act should be abandoned in favor of state regulatory programs?

6. The President's budget for Fiscal Year 1982 provides us with some idea of the staffing level you will have available to carry out the responsibilities of your office. Do you believe that this will be sufficient or do you anticipate the need to augment the personnel level of the agency?

7. What methods of internal auditing of EPA do you anticipate implementing to improve oversight of agency activities and to eliminate existing or potential waste, fraud and abuse?

May 3, 1981

ANSWERS TO SENATOR BAUCUS' QUESTIONS

1. As I remarked in my opening statement, EPA today is affected by economic, energy and environmental considerations largely unknown when many of our environmental statutes were enacted. Protecting and enhancing our environment in a manner that is least obstructive of other national objectives, will, as you properly point out, require a delicate balance. I intend to be a strong and articulate spokesperson for environmental objectives, in all forms, in carrying out the responsibilities of the Agency.

2. As Vice President Bush has advised the Committee, it is our hope that the President's legislative recommendations on the Clean Air Act will be submitted to Congress by June 30, 1981.

3. The Superfund legislation provides the Federal government broad authority to respond to situations where hazardous substances, including hazardous wastes, endanger public health or the environment. In most such situations, there will be great concern by the affected population about the risk that is presented, the responses of Federal, State and local officials to correct the problem and the timetable for response. Often public concerns arise because of a lack of information about the situation. Therefore, it is important that the public be given appropriate, accurate information in a timely manner. An important part of the Federal response strategy will be to insure that governmental officials and other responsible parties respond to the public need for information. I will work with other Federal departments and agencies having responsibilities under the Superfund legislation to make public involvement a key element in the Federal strategy for implementing Superfund.

4. As you know, we discussed this matter earlier and you stated there was a problem in funding the Study. I will be happy to look into it upon assuming the office of Administrator. Assuming that funding for the Study has been requested in the President's Budget, we must await Congressional reactions to the request.

5. The President's Budget indicates the Administration's intent to phase out the Federal noise regulation program during the next fiscal year. Final determination on the future of the Federal noise control program will be made by Congress when it considers statutory changes to the Act. While I will implement the requirements of Federal law established by Congress, I do support President Reagan's programs to eliminate Federal regulation of noise emissions from additional products.

6. I am aware of the President's Budget for fiscal year 1982 for EPA. I am confident the President's Budget provides sufficient funds and personnel to administer the Agency.

7. On March 26, President Reagan announced creation of the President's Council on Integrity and Efficiency to ferret out waste, fraud, and abuse in Federal Programs. EPA's Inspector General will be a member of that Council which will be headed by Ed Harper, Deputy Director of the Office of Management and Budget. The Task Force will develop means of improving internal audits, investigations of program abuses, and implementing program controls to prevent the waste of taxpayer's money. EPA will be an active participant in this program.

STATEMENT BY SENATOR MAX BAUCUS

SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE: HEARING ON
THE NOMINATION OF MRS. ANNE GORSUCH
MAY 1, 1981

Mrs. Gorsuch, as a member of the House of Representatives, I had the good fortune to have my office located adjacent to that of Congressman Ike Andrews of North Carolina. Congressman Andrews represents the Raleigh-Durham area whre, as you probably know, EPA has its largest fiedl operation in the area at what is called the Research Triangle Park.

Earlier this week, Congressman Andrews called me after he had learned about a proposal to transfer some 26 employees from EPA's Analytical Chemistry Branch from Research Triangle Park to your agency's Environmental Monitoring Systems Laboratory in Las Vegas. Congressman Andrews has asked that I submit to you some questions about this proposal to re-locate the Analytical Chemistry Branch cross-country to Nevada.

On review of these questions, I believe that Congressman Andrews raises a strong argument in favor of leaving the Analytical Chemistry Branch in North Carolina. I hope that you will carefully investigate this decision to determine whether sufficient consideration has been given to the consequences which necessarily follow this decision.

In any case, I believe that these questions do warrant inclusion in the Committee's record. I would appreciate having your responses to these questions made available for the reco In addition, I would appreciate having copies of your respons provided to Congressman Andrews at your earliest convenience.

Thank you.

Questions about the proposed re-location of the Analytical Chemistry Branch (ACB) from the Environmental Protection Agency's Health Effects Research Laboratory at Research Triangle Park, North Carolina, to the Environmental Monitoring Systems Laboratory at Las Vegas, Nevada

1. ACB has been instrumental in assessing such major environmental problems as PCB spills in North Carolina, the kepone emergency in Hopewell, Va., and the Love Canal disaster in upstate New York. Twenty-three members of the ACB staff have received Commendable Service Medals and Special Achievement Awards for these endeavors. The branch has been recognized nationally and internationally for its leadership in dioxin exposure assessment research.

What possible good can result from upsetting, by transfer more than 2,000 miles from its present location, one of EPA's best and most effective technical units?

How is it in the best interests of EPA and the nation for the ACB's scientific capability, which has been built up over a long period of time, to suddenly be dismantled?

2. ACB's Chief estimates that the proposed re-location would result in the loss of 50-to-75 percent of the staff. Most, apparently, will not re-locate from North Carolina to Nevada.

Isn't the ACB staff virtually unanimous in its opposition to the proposed re-location?

If most members of the ACB staff do not re-locate, can their talents and expertise be easily replaced?

3. Hasn't it been established that most hazardous waste problems, which ACB personnel have the technology and expertise to assess, are in the eastern half of the United States?

If so, as a practical matter, shouldn't ACB remain on the East Coast?

4. ACB's Chief has estimated that it will cost $2-to-$3 million to re-locate from Research Triangle Park, N. C., to Las Vegas, Nev.

Is the proposed re-location worth this cost?

5. Is space available in Las Vegas to house the ACB staff and equipment?

6. Are EPA officials in Washington aware that $750,000 worth of specialized high-hazard laboratory facilities were recently completed and will have to be abandoned, along with 15,000 square feet of standard laboratory and office space, if ACB is re-located from the Research Triangle Park to Las Vegas?

7. Have EPA officials in Washington fully assessed the ACB Chief's March 31 memorandum on the impact of the proposed re-location?

Are they aware that about $20,000 worth of distilled in-glass solvents would have to be left behind because of shipping restrictions?

Are they aware of the difficulties in transporting five spectrometers in air-cushioned vans and more than 40 gas and liquid chromatographs and auxiliary equipment from North Carolina to Nevada?

How long would these expensive instruments be out of commission?

Isn't it reasonable to expect a "down time" of nearly one year to dismantle, pack, load, transport, unload, re-assemble, install and calibrate this equipment?

8. With abolishment of the chemistry component of the health effects research laboratory in Cincinnati and the field station in the State of Washington, won't ACB be EPA's only capability for measuring toxic chemicals in humans?

How will that expertise be retained by re-locating the branch to Las Vegas?

9. ACB has provided vital chemical support to many other offices in EPA and to other government agencies.

How can the branch continue to provide such support with a substantial loss of its staff and with the "down time" that inevitably will accompany re-location to Las Vegas?

10. Analytical reference standards of well-defined purity serve as a basis of accuracy of EPA environmental measurements. The Food and Drug Administration relies on ACB's reference standards to accomplish its regulatory and surveillance activities which assure that imported foods and foods entering interstate commerce do not contain illegally-high pesticide residues.

If the quality assurance activities related to standards are lost because of re-locating ACB, how can EPA continue to live up to its responsibility with FDA?

Would EPA be able to continue honoring its inter-agency agreement with FDA to supply analytical reference standards of certified purity?

Wouldn't the loss of ACB's scientific experts responsible for certification of purity of standards adversely affect EPA's ability to make regulatory decisions based on accurate analytical data?

If ACB is re-located to Las Vegas, will the EPA have to rely on industrial or other profit-making contractors to insure the integrit of reference standards and, consequently, the quality of environment measurements?

11. ACB is a branch of EPA's largest field operation, which, in turn, is located in the nation's largest planned research park. Primaril because of the Research Triangle Park, with its 17,700 employees, and three major area universities -- Duke, UNC-Chapel Hill, and N. C. State -- the Raleigh-Durham Standard Metropolitan Statistical Area has the greatest concentration of Ph.D. scientists and engineers per capita of any SMSA in the United States.

Being in the Research Triangle Park enables ACB's staff to interact closely with other nearby EPA research scientists, with the newly-established Chemical Industry Institute of Toxicology, with the National Institute of Environmental Health Sciences, with such major EPA contractors as Northrop and Research Triangle Institute, and with university researchers.

Accessiblity to the libraries, seminars and personnel of Research Triangle Park institutions and area universities is essential to ACB's capabilities.

How can these important external interactions possibly be continued if ACB is re-located to Las Vegas?

12. ACB interacts very closely with the National Institute of Environmental Health Sciences in the Research Triangle Park on assessing such problems as PCB's and the Agent Orange contaminant, dioxin, in human blood, mother's milk and body tissues.

Could this relationship be effectively sustained if ACB were re-located more than 2,000 miles away to Las Vegas?

13. If the proposed re-location of ACB to Las Vegas takes place, will NIEHS or the Center for Disease Control have to assume the responsibilities of measuring toxic chemicals in humans and of exposure assessment research?

Will either agency be able to assume such responsibilities?

14. A January 19 memorandum by the acting assistant administrator for research and development stated that personnel and program reductions were planned in "the inhalation toxicology program at HERL/Cincinnati, the chronic epidemiology programs at both HERL's, and the non-chemical analysis parts of the pesticide program at HERL/RTP." This clearly exempted ACB.

What has happened since January 19? Why have the plans been changed to include the proposed re-location of ACB to Las Vegas?

15. EPA has an Environmental Monitoring Systems Laboratory at the Research Triangle Park?

Has any consideration been given to transferring the Environmental Monitoring Systems Laboratory at Las Vegas to EMSL/RTP?

16. If personnel reductions are necessary, wouldn't one of these three alternatives be preferable to transferring ACB to Las Vegas:

-- Transfer the 12 vacant Superfund positions at Las Vegas to the Research Triangle Park and make ACB an eastern field station of EMSL/Las Vegas,

-- Reduce other parts of the Health Effects Research Laboratory at RTP which seem to be less critical than ACB to the EPA and the federal government, or

-- Subject the ACB staff to a reduction-in-force?

17. ACB moved from Florida to North Carolina in 1973, and now it is proposed that it be moved to Nevada. This seems to be largely a move just for the sake of making a move.

If ACB is re-located to Nevada, how long will it be before it is moved somewhere else?

18. EPA has undergone many re-organizations and re-locations.

Have they solved any problems? Have they resulted in any improvements? Is the proposed re-location of ACB yet another in a series of rather pointless re-locations?

May 3, 1981

ANSWER TO CONGRESSMAN ANDREW'S QUESTION

1. Your questions call to my attention, for the first time, any "proposal" to re-locate EPA's Analytical Chemistry Branch from Research Triangle Park, North Carolina, to Las Vegas, Nevada. While I had not been aware of the questions surrounding the appropriate location for the Analytical Chemistry Branch, your information is certainly helpful and will be considered should this matter arise after I am confirmed.

WILLIAM V. ROTH, JR., DEL., CHAIRMAN
CHARLES H. PERCY, ILL.
TED STEVENS, ALASKA
CHARLES MC C. MATHIAS, JR., MD.
JOHN C. DANFORTH, MO.
WILLIAM S. COHEN, MAINE
DAVID DURENBERGER, MINN.
MACK MATTINGLY, GA.
[illegible]REN B. RUDMAN, N.H.
THOMAS F. EAGLETON, MO.
HENRY M. JACKSON, WASH.
LAWTON CHILES, FLA.
SAM NUNN, GA.
JOHN GLENN, OHIO
JIM SASSER, TENN.
DAVID PRYOR, ARK.
CARL LEVIN, MICH.
JOAN M. MC ENTEE, STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, D.C. 20510

April 23, 1981

The Honorable Robert T. Stafford
Chairman
Committee on Environment and Public Works
4202 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Bob ~~Chairman~~:

In the course of your Committee's confirmation hearings on the Administrator of the Environmental Protection Agency, I ask that the attached question be posed of the nominee.

Thank you for your attention to this matter.

With best wishes,

Sincerely,

Charles McC. Mathias, Jr.
United States Senator

CM:mtm
Enclosure

CONFIRMATION HEARINGS

ANN GORSUCH

EPA ADMINISTRATOR

QUESTIONS OF SENATOR CHARLES McC. MATHIAS, JR.

EPA Chesapeake Bay Program

1. In 1976, Congress, through its Appropriations Committees, directed the Environmental Protection Agency to commence a Chesapeake Bay Program, which would be applicable to other estuaries as well.

   Beginning with a $5 million appropriation, the Agency identified ten areas of water quality investigation and focussed on three topics of most pressing concern to the Bay's environmental health: toxics; nutrient enrichment; and submerged grasses.

   The first three years of the program were plagued by intransigence by the Agency. Staffing was delayed. When staff were assigned, they were borrowed from elsewhere, had little interest or expertise in the Bay, and worst of all, were not even located on the Bay. It took three years of cajoling for the ten allotted positions to be filled with the proper people and relocated to the Bay proper.

   Once the results of the program's research findings began to come in, however, the Agency began to recognize the worth of the program and its potential applicability to other areas of the nation.

   Thus, in fiscal years 1979 and 1980, the Agency requested $5 million annually to complete the investigation and to produce some suggested management options.

   Fiscal 1982 was to be a completion year for the program at a $3 million level. The present Administration, however, has inexplicably lopped off $2 million of this completion year in its reduction in the "research and development" budget for EPA.

   As I noted in a letter to the Acting EPA Administrator, most of the benefits and findings of research will be lost if this $2 million is disallowed.

   A sizeable audience is waiting for publication of technical findings; findings for the interested public; and a management structure for the Bay. It would, indeed, be short-sighted to let this $25 million investment in scientific findings on our nation's largest estuary remain unassembled, unpublished, and unacknowledged by scientists, State governments, and Bay users.

   There is much of value in the Bay program's research findings to the Maryland and Virginia state governments who have been active participants in the program.

Mathias questions - EPA Adminstrator

Is it not true that the technical reports from this program will not be published as a result of this funding cutback?

Is it also not true that synthesis papers posing management questions and scientific answers will also not be published?

Is it also not true that the citizen participation element of this program will be curtailed, including discontinuance of the monthly newsletter, just at the point when research findings and management options are to be discussed with the public-at-large?

I urge you to reconsider this ill-advised funding reduction and I invite you to visit the Chesapeake Bay , its research scientists, and Bay users to see firsthand with me this program's products.

May 3, 1981

ANSWERS TO SENATOR MATHIAS' QUESTIONS

It is my understanding that Chesapeake Bay program to which you refer, was a Congressionally mandated five-year study of the Chesapeake Bay ecosystem, and that the study would be in its sixth year in 1982. I have no first hand knowledge of the nature of the internal difficulties which you described.

As to the specific questions you asked, those are internal management questions, the answer to which I just do not know. The issues appear well worth reviewing, and I can assure you that I will do so upon taking office.

QUESTIONS SUBMITTED ON BEHALF OF SENATOR HAYAKAWA

OCEAN DUMPING OF WASTES HAS RECENTLY BEEN A SUBJECT OF NUMEROUS REPORTS AND PUBLICITY. HOW WOULD YOU, AS ADMINISTRATOR, VIEW EPA'S ROLE IN THIS ACTIVITY?

THERE IS A TITLE I (OCEAN DUMPING) PROGRAM CURRENTLY IN PROGRESS WITHIN EPA. DO YOU PLAN TO INCREASE THE AGENCY'S LEVEL OF EFFORT IN THIS AREA?

WOULD THIS BE DONE BY AN INCREASE IN EPA PERSONNEL OR BY THE USE OF PRIVATE SECTOR ASSISTANCE?

May 3, 1981

ANSWERS TO SENATOR HAYAKAWA'S QUESTIONS

EPA's role is defined by Congress in the Marine Protection, Research and Sanctuaries Act (commonly referred to as the "Ocean Dumping Act"). The Act charges EPA with responsibility for research, establishing criteria for designation of dump sites, and issuing permits for dumping at designated sites.

The role is in flux at the present time due to current litigation, and given this on-going litigation, it would be inappropriate for me to be more specific about the merits of the issues.

President Reagan's budget requests an increase from $2.4 million to $4.2 million for research and development under the Ocean Dumping Act. If Congress appropriates these funds, EPA's effort in this area can be increased. At this time, I do not know if an increase in EPA personnel is required, nor have I made a decision on whether to use private contractors to undertake this work. Certainly no final decisions would be made in that regard until Congress acts on the President's budget request.

RESUME

NAME:	Anne McGill Gorsuch	DATE OF BIRTH:	4/21/42
HOME ADDRESS:	243 South Fairfax Denver, CO 80222	PLACE OF BIRTH:	Casper, WY
BUSINESS:	931 14th Street Room 1300 Denver, Colorado 80202	BUS. PHONE: HOME PHONE:	624-2200 399-6353

EDUCATION:

6/59	Saint Francis de Sales High School
Summers 1955, 1956, 1958	National University of Mexico Courses in Spanish Language, Spanish Literature, Mexican History, Archaeology
1959 - 1961	University of Colorado, Boulder, B.A. Major: Political Science Minor: Economics and Spanish
1961 - 1964	University of Colorado Law School, LL.B.

ACADEMIC ACHIEVEMENTS:

Undergraduate Honors Program

Mortar Board Scholastic Sorority

University of Colorado Law Review - Board of Editors, Assistant Business Manager

Phi Alpha Delta (Legal Fraternity)

Fulbright Scholarship - Jaipur, India, 1964 - 1965
Instructed high school students in English language. Conducted an independent study of the judicial system and policies of the penal institutions with particular emphasis on the Indian modifications to the English Common Law.

EMPLOYMENT:

1966 - 1967	Assistant Trust Administrator, First National Bank of Denver
1966 - 1967	Part-time Instructor of Political Science, Metro State College, Denver, Colorado

1968 - 1971 Assistant District Attorney, Jefferson County, Colorado.

Initial responsibilities included preparation and trial of traffic offenses and minor criminal offenses. Later assumed full responsibility for all non-support and juvenile offenses within the judicial district. These responsibilities included the supervision of secretarial and investigative staff, all contact with complainants, case preparation and trial. In one year's time non-support collections were increased from $35,000 to $350,000.*

1971 - 1973 Deputy District Attorney, Denver, Colorado.

Full responsibility for all non-support claims in the Denver metropolitan area. Responsibilities included: supervision of secretarial staff of approximately 6, 1 paralegal, and 2 investigators; all contact with complainants; case preparation, trial and follow-through collection work. During the approximately two years of service: revamped the entire administration of the office; established automatic referral system from Department of Social Services to District Attorney's Office for all Aid to Dependent Children applicants; established paralegal interview/intake procedures; purged or brought to current status all pending cases; established expedited trial procedures in cooperation with the judiciary; created internal management operations which guaranteed automatic follow-through for implementation of court orders. Trial work was limited to civil cases with no fewer than 20 court appearances per week. Collections exceeded 1 million annually by 1973.*

1974 - 1975 Hearing Officer for Real Estate Commission and State Boards of Cosmetology, Optometric Examiners, Professional Nursing, and Veterinary Medicine.

Performed duties of an administrative judge in cases involving the allegation of statutory or regulatory violations by licensees/practitioners.

1975 - Present Lawyer, Mountain Bell Corporate Law Department.

The legal department at Mountain Bell, like most large firms, is departmentalized, providing areas for specialized practice.

*In both capacities, the duties I have described were shared with Ann Allott, a fellow lawyer and friend. To my knowledge we were the first professionals--certainly the first lawyers--to implement the concept of job-sharing in Colorado.

Initially I was involved in the real property section which had the responsibility for the legal aspects of land acquisitions, leases, easements, right-of-way agreements, construction and remodeling contracts, city and county permits.

Much of the Company's physical plant is located on public property (streets and roads) or transverses federally owned or regulated land (Forest Service and BLM); therefore, while the work involved contacts with the expected commercial community, it had the additional dimension of heavy involvement with government at all levels.

Following my election to the State House of Representatives in 1976, I took a leave of absence from the legal department for each of the annual legislative sessions and practiced in the following areas:

Commercial law--equipment leasing and marketing practices

Anti-trust--research, trial-related practice

Labor Law--EEOC complaints, grievances based on contract disputes

Governmental Experience:

	Member, Colorado State House of Representatives, 1976 - Present.
1976 - 1978	Vice-Chairman of Judiciary Committee
	Member of Finance Committee (considers all tax proposals) and Appropriations Committee
	Voted Outstanding Freshman Legislator
	Successfully sponsored 21 Bills
	Responsible for repeal of over 70 sections of statutes which were obsolete, duplicative, or unnecessary
	Author and Prime Sponsor of Colorado Presumptive Sentencing Law
1978 - 1980	Chairman, House State Affairs Committee
	Chairman, House-Senate Legal Services Committee 1980 (Legal arm of General Assembly)

Member, Transportation and Energy Committee

Prime House-sponsor of Air-Pollution-Control Inspection and Maintenance Legislation

Chairman, Interim Committee on Hazardous Waste (Considered RECRA provisions and regulations)

Current Involvement:

Director, Board of Directors, YMCA

Member, Mercy Hospital Civic Advisory Board

Commissioner, National Commission on Uniform State Laws

Colorado and American and Denver Bar Associations

Currently member of Legislative Section

Former Member, Family Law Committee, Criminal Justice Section, Environmental Law Committee

REFERENCES:

Bob Burford, Speaker of the House of Representatives 1978-1980, 113 Mira Monte Road, Grand Junction, Colorado 81501

Jarvis Seccombe, Former District Attorney, Denver
931 - 14th Street, Denver, Colorado 80202

Others available upon request.

NOMINATION OF JOHN W. HERNANDEZ, JR.

MONDAY, MAY 4, 1981

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, D.C.

The committee met at 2:35 p.m., in room 4200 Dirksen Senate Office Building, Hon. Robert Stafford (chairman of the committee) presiding.

Present: Senators Stafford, Domenici, Chafee, Simpson, Abdnor, Gorton, and Randolph.

Senator **STAFFORD**. The meeting of the Committee on Environment and Public Works will come to order.

We are happy for the second time to see a nominee of this administration with a most imposing array of distinguished people, to introduce him. I am most happy to first of all ask our colleague on this committee and the distinguished Chairman of the Budget Committee, Senator Domenici, if he cares to introduce Mr. Hernandez.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator **DOMENICI**. Mr. Chairman, I am pleased to introduce Dr. John Hernandez to this committee. His last assignment was the dean of civil engineering at New Mexico State University.

I will not speak too long in his behalf. My distinguished colleague, Senator Schmitt, is here to speak in his behalf, and our distinguished Congressman, Manuel Lujan.

I merely want to say in behalf of John Hernandez, Jr., Mr. Chairman, that his résumé is one that makes New Mexico very proud. The accomplishments that that résumé reflect make this Senator absolutely confident that the President made an extremely wise choice in nominating this distinguished New Mexican for the second position in EPA.

I need not repeat his background, but three or four of the items in it seem to me to be exciting and the exact kind of thing that an Environment Protection Agency needs.

First of all, I think it is rather historic that we have a civil engineer high in the ranks of the Environmental Protection Agency. He has not only a B.A. in civil engineering but, as he moved along, he specialized and turned that into a master's in sanitary engineering from Purdue University, a master's in environmental engineering from Harvard University, and a Ph.D. in water resources from Harvard in 1965.

He has used that kind of background well, and not only in our State where he administered a major department of a major university. His technical background, along with his academics, permitted him to be involved in numerous governmental advisory committees, many of which had to do with the environment, and not only clean water but a myriad of environmental issues, locally and nationally.

State panels in the area of environmental control found Dr. John Hernandez leading a group of professionals advising our State. Many times that spilled out into adjoining States, and on a number of occasions that expertise was used nationally.

I need not say that that kind of background qualifies him for this job becasue I think unequivocally it does. But I would close by saying in addition, it has brought him wide respect in the State of New Mexico. I think it is common knowledge, Mr. Chairman, that the State of New Mexico is a State with a rather fantastic environment and a very difficult environmental mix to maintain. The beauty of our high country coupled with its desert qualities, all mixed with some thriving metropolitan areas and some of America's greatest scientific labs. And when a man like this can be respected in that kind of a community, it bodes well for the work he will do when he is confirmed. I hope he will be confirmed quickly.

Having said that, I am sure he is prepared today, Mr. Chairman, to answer any questions that this committee might have.

With your permission, I would now like to yield to my distinguished colleague, Senator Schmitt, and in turn to Congressman Lujan.

Senator STAFFORD. We would be honored to have Senator Schmitt speak also.

STATEMENT OF HON. HARRISON SCHMITT, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator SCHMITT. Mr. Chairman, it is with great pleasure and pride that I am here to join with our distinguished senior colleague in introducing John Hernandez—a good friend as well as an outstanding engineer in New Mexico.

I think that it is clear and should be clear to this committee that the Environmental Protection Agency is stuggling to prove that one of Schmitt's basic rules is wrong, and that is that you can conduct both regulation and the use of new technologies and the development of new technologies within the same agency.

I know of no agency that has been able to do that yet, but I think maybe one reason is that we have avoided having strong technical people in the uppermost reaches of a particular agency.

Here John's expertise in the fields of water resources, environmental, civil, and sanitary engineering is truly outstanding and should provide the EPA with at least the opportunity to begin to apply some of the fantastic new technologies that are available to some of the basic problems of protecting and preserving the environment.

He not only is an engineer but he is a teacher. I think that that experience is going to provide him with a great deal of insight into how to deal with other members, not only of his agency but other people with whom he must come in contact in his work.

He has great knowledge of the problems of our environment, great knowledge of the problems of government, and I am extremely excited and happy to have him before you today. May be of equal weight to all of these is he has proved to many of our friends in New Mexico, our mutual friends, that having a Harvard Ph. D. does not disqualify you for these kinds of positions. So as a fellow Harvard Ph. D. holder, I am particularly happy to welcome John and look forward to working with him and, obviously, with the committee in the future.

Senator **Stafford**. The chair very much appreciates your statement, Senator Schmitt. The chair wanted to note that he is now going to welcome an old friend, Manuel Lujan, who I served with in the House years ago. It is very pleasant to have you here, Congressman. We appreciate anything you care to say at this time.

STATEMENT OF HON. MANUEL LUJAN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. **Lujan**. Thank you very much, Mr. Chairman.

We are, of course, all very proud of Dr. John Hernandez, whose achievements in water pollution control and other environmental areas have already made a lasting contribution to the State and the Nation, of course, by carrying it on to mankind as a whole.

Mr. Chairman, in a State whose livelihood is water, John's work in water resource development and protection has been particularly significant. but of even greater significance to the future of our State is the number of dedicated, environment-conscious, water-oriented engineers that he trained during his many years as teacher and professor and Dean of the College of Engineering at New Mexico State University.

We feel the Nation is fortunate to obtain Dr. Hernandez' services as one of the key personnel in the Environmental Protection Agency at a time when we must make some very important decisions and balance between environmental concerns and energy economics.

John's track record of achievement and excellence in everything he has done is evidence of what we can expect from him in his new assignments. So, Mr. Chairman, I congratulate Dr. Hernandez on this appointment, but I offer even warmer congratulations to the President and to the administration for having named John to this position. His talents and his knowledge, I believe, are up to the task, and he will be a credit to this administration.

Senator **Stafford**. For the committee, we are very grateful to all three of you for appearing here to introduce John Hernandez to us. Your words of commendation will certainly carry a great deal of weight with this committee.

We know of all the fine things you said about Dr. Hernandez. We realize they are true. we observe that he is modest enough to even blush a little bit at the mention of a Ph. D. from Harvard.

Senator **Schmitt**. Mr. Chairman, if you would yield for one moment, Congressman Skeen, from whose district John comes, called just a few moments ago to send his regrets to you and to John for not being here. He has hit a critical vote in his subcommittee over on the House side and was unable to make it, John. But Joe joins with us in all the good things we said. If we have said anything that wasn't so good, I am sure he would disassociate himself from those. Being a Texas Aggie, he probably wishes I hadn't brought up the business of a Harvard Ph. D.

Senator **Stafford**. We appreciate your coming. We would be glad to have you remain, if you wish, or not, at your discretion.

Senator **Domenici**. Mr. Chairman, before you proceed, might I just, as a finality to our congressional statements, indicate our collective appreciation not only for the delegation but for all New Mexicans to the President of the United States for this distinguished nomination. This is one of the highest appointments that a Hispanic American has received in our country. We are very proud that it came under this President and that it is Dr. John Hernandez. Thank you very much.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

Senator **Stafford**. Thank you very much, Senator Domenici.

Dr. Hernandez, I want to offer my own welcome to that of my colleagues here on the committee. I am happy to note that your nomination was received by the Senate first thing this morning and that we are now able to conduct this hearing without delay.

I must say that after the astonishing turnout for the confirmation hearing of Anne McGill Gorsuch to be Administrator of the Environmental Protection Agency, I am relieved to find that the business of the Committee on Environment and Public Works is beginning to return to a more manageable scale. Even though our guests for your confirmation hearing can be numbered by the score, not of the hundreds, one cannot conclude that you, Mr. Hernandez, are not a very popular man. The people who introduced you a few minutes ago proved that, and the committee has received a number of glowing endorsements of your credentials.

Nor is the position of Deputy Administrator of less significance to the committee. In appropriate cases you will be asked to act in the administrator's stead. You are a key member of the management team at EPA. I am confident that your outstanding scientific and academic experience will contribute significantly to executing EPA's mandate. I note particularly your extensive experience in the field of water quality and safe drinking water—two areas of special concern to this committee.

The committee is scheduled to consider your nomination in a business meeting at the conclusion of this hearing, if we get a quorum. At the same time, we will take up the nomination of Anne Gorsuch to be administrator, under the same circumstances; that is, if we can get a quorum.

The committee is anxious that you both get on with the enormous task before you without further delay.

Senator Simpson, do you have an opening statement?

OPENING STATEMENT OF HON. ALAN K. SIMPSON, U.S. SENATOR FROM THE STATE OF WYOMING

Senator **Simpson**. Mr. Chairman, a very brief one. I was really looking forward to putting the quiz on Senator Domenici and Senator Schmitt because there they were at the table and I had my chance and missed. I regret that terribly.

Senator **Stafford**. We will make sure you get another chance.

Senator **Simpson**. I hope so.

Senator **Domenici**. You will never get a chance.

Senator **Simpson**. That is what I thought.

Just a few remarks, Mr. Chairman, regarding the nomination of Dr. Hernandez for this post. I have enjoyed a very fine visit with this gentleman. He really has an extraordinary record of past accomplishment. That extensive involvement to in sanitary and environmental engineering practices will be of tremendous use to the agency and the Government. You really have an extraordinary background and technical expertise which I think is going to enable you to get on an equal footing with the scientists within the EPA and the technical personnel in the private sector very quickly.

I think that is going to be a very key and significant part of your work, because we now have 10 regional offices and 9 major laboratories since the EPA was founded. Certainly you will be instrumental in guiding and managing those most invaluable laboratories.

So I would just, on a final note, say that it seems to me what I have read of you and what I have known as I have visited with you that your concern for environmental protection predates the so-called environmental activism of the past decade. You were an environmentalist when the rest of us in the country were wondering about just the phrase ecological sciences. I think that is important. I think that long-term interest in not only the academic but the applied elements of environmental management give you a perspective which is going to be of tremendous assistance.

In short, Mr. Chairman, I think this gentleman embodies that combination of proven management and technical background which the leadership of the Environmental Protection Agency must have in order to carry out a credible and successful administrative effort. Besides that, I find you to be a very sincere and dedicated human being and one whom I admire because of your willingness to serve when you didn't have to and to produce results which you indicate you are going to do. We certainly need that.

Thank you so much.

Senator **Stafford**. Thank you very much, Senator Simpson.

Senator Gorton?

Senator **Gorton**. No opening statement.

Senator **Stafford**. Senator Abdnor?

Senator **Abdnor**. I have no statement, Mr. Chairman. I want to welcome Dr. Hernandez to the committee and say I am very, very impressed by your credentials and your background. I know you are going to be a great addition to the EPA, and we are looking forward to working with you.

Senator **Stafford**. Thank you very much, Senator Abdnor.

At this point, without objection, the chair will place a statement of Senator Chafee in the record. Senator Chafee had hoped to be here, but he is in the course of markup in another subcommittee at the present time and was unable to get away.

[The statement follows:]

STATEMENT BY SENATOR JOHN H. CHAFEE
ON THE NOMINATION OF JOHN HERNANDEZ
TO BE EPA DEPUTY ADMINISTRATOR
MAY 4, 1981

Good afternoon:

This afternoon, the Committee is meeting to consider the nomination of Mr. John Hernandez of New Mexico to be the Deputy Administrator of the Environmental Protection Agency. Senator Stafford has a previous engagement that regrettably requires him to be away from the building for a while this afternoon and he will join us in a little while.

Mr. Hernandez, you were here on Friday during our consideration of Mrs. Gorsuch's nomination and you heard the comments that members of this Committee made about the Agency and about the roles of the individuals who are charged with leading it.

The EPA was created by Executive Order to be an independent agency. Although it is part of the Executive Branch, it is charged to provide the President and the Congress with providing advice on matters relating to the environment. It is not necessarily the job of your agency to forge workable compromises at all times. There are certain times when the Environmental Protection Agency has to stand apart and, as they say, "call them as it sees them."

Previous Administrators and Deputy Administrators have advised the Committee that this task is often a lonely one, but an essential one. However, as the agents of the Congress for carrying out the Clean Air, Clean Water, Superfund law, and others, the need for you and the Administrator to have that freedom to speak out is essential.

The EPA has a unique vantage point: While other agencies are charged with many diverse responsibilities, EPA has only one, protecting the environment. When decision making time comes around, there are no other voices solely speaking on behalf of the environment at that table except one, the Environmental Protection Agency. I hope that you and Mrs. Gorsuch will be a strong and united voice at that table.

Mr. Hernandez, I must say, you are a very popular man. Our Committee has received many favorable pieces of correspondence about you over the last few weeks. You have had a distinguished academic career both in New Mexico and abroad. Your engineering background will be valuable to you at EPA as the Congress works to amend the Clean Air and Water Acts.

You are also going to need all the administrative skills that you have ever learned in order to manage EPA. Since it was created in December 1970, the Agency has grown to more than 10,000 people with an operating budget of nearly $1.5 billion

We want to welcome you here today, Mr. Hernandez, and look forward to working with you in the future.

Senator **Stafford**. Dr. Hernandez, we believe you have a statement. We welcome your giving it to us.

STATEMENT OF JOHN W. HERNANDEZ, JR., NOMINEE TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

Dr. **Hernandez**. Thank you very much, Mr. Chairman, members of the committee. It is my very real pleasure to have this opportunity to come before you as President Reagan's nominee for the post of Deputy Administrator of the Environmental Protection Agency. I seek your consent in my appointment to this very important leadership position at EPA.

I deeply appreciate all the help and support that I have received from so many people. My fellow New Mexican, and your colleague, Senator Domenici, was the first and most persistent advocate in bringing my name and credentails to the attention of the new administration. The great respect that he has earned for his work here in the Senate and the confidence in which he is held at the White House led to a series of interviews and my ultimate designation by President Reagan. I am also grateful for the support that I have received from the other members of the New Mexico congressional delegation. I would like also to like to note and thank my many friends in the engineering profession, particularly those in the technical and professional societies, for their help.

I have given each of you a copy of my vita. From it, you will note that I have had administrative and management experience in the Navy—I am still an active reservist in the Navy—in a State environmental agency where I was responsible for the wastewater treatment program, and in academia where I have been a college dean, the director of two multiuniversity institutes, and the manager of many grants and contracts.

I have written on a broad range of subjects, from technical papers such as one on the effects of alkyl benzene sulfonates on anaerobic digestion, to multidisciplinary water resources studies, to other, more general texts; for example, a manual on urban land-use management.

My technical background is in water quality and I like to think of myself as an engineer with a broad, well-developed concern for the conservation of our natural resources. I have served on a number of local, State, national, and international committees related to resource management. I have been on U.S. Public Health Service and EPA committees, panels, and study groups, most recently those associated with the Safe Drinking Water Act.

I started my public health career 25 years ago when New Mexico had only three or four regulations to cover the vast realm of environmental management, including milk and food sanitation. Using these regulations and a general nuisance statute, seven people in the State office directed all of New Mexico's environmental programs in the late 1950's. In retrospect, I think we did a relatively good job.

Much has happened since that time. EPA is 10 years old and, as you know, most of the statutes that set forth the goals and missions of the agency have been in effect 5 to 8 years, and some, such as superfund, only a few months. As a result of this nationally directed effort, significant steps have been taken to safeguard the environment and noteworthy improvements in air and water quality have been achieved during the past decade.

There has also been a great deal of progress made at the State level during the 1970's. Most States now have a comprehensive set of environmental protection laws and have, or are in the process of adopting, regulations to implement statutes. Laboratory facilities and technical staff capabilities of State agencies have markedly improved in recent years.

The process within EPA to turn over to the States much of the authority for the operation of grant and regulatory programs is progressing. Returning primary responsibility for environmental regulation to the States will result in more responsive and efficient Government. It is encouraging to note the sense of concern for maintaining environmental quality that I find commonly manifested at the State and local levels.

In the course of making courtesy calls to meet the chairman and other members of this committee, I was asked a number of questions. One answer I would like to share with all of you was in response to the question asking if there was any specific mission that I would bring to EPA. I come to the agency with a single personal goal: that the agency attain a national and international reputation for quality and excellence in its development and use of science and technology in its decisionmaking process.

We live in a technological society where improved manufacturing techniques and new products come into our lives on an almost daily basis. This is an essential process if America is to remain in the forefront in the application of research as a means of enhancing our productivity. And we must continue to be productive people if we are to maintain the quality of life that we now enjoy.

With technological change, we will encounter new environmental problems and, given a little time, we can and will solve these emerging problems through the application of our technology. We can enjoy economic growth and still maintain the quality of our environment, but it takes a willingness on the part of all of us to work together.

In general, EPA's internal scientific and technical competence is well above average when compared to other State and Federal agencies. In some areas, EPA scientists are among the best in the country.

However, the need for research results that are immediately applicable to regulatory and enforcement issues has led in many instances to ill-conceived, poorly planned, and hurriedly executed studies which have resulted in products of inferior quality. This has culminated in a wasteful process, both in terms of time and EPA moneys. It has also been costly to those being regulated and the credibility of the agency has suffered as a consequence. It is true that good science makes good economics.

The need to act under severe time constraints has been detrimental in the decisionmaking process at EPA and has hindered the development of innovative, rigorous, high-quality research. I hope that as the need for deadlines diminishes, we will be able to set the agency on a course that will result in a scientific-based organization that prides itself for its excellence and its ability to support the technical needs of America's cities and States in a mutual quest to protect and enhance the quality of the environment. I look forward to working for Anne McGill Gorsuch as we join together with the team that will provide leadership for future progress in this national effort.

I would also like to acknowledge my gratitude to President Ronald Reagan for the unique opportunity to be a member of this team. Thank you very much, Mr. Chairman. I stand open to your questions, sir.

Senator STAFFORD. Thank you very much, Dr. Hernandez.

Let me ask you a few questions. But before that, gentlemen, should we agree on 10 minutes instead of 5 today for questions?

Senator DOMENICI. Fine with me, Mr. Chairman.

Senator STAFFORD. If that is agreeable, we will go on the 10-minute rule.

Dr. Hernandez, do you think of yourself as an environmentalist? Would you take a moment to tell us whether air and water quality, public health and other natural assets should be protected by the Federal Government; and, if so, how?

Dr. HERNANDEZ. Yes, I do think of myself as an environmentalist. I think it was Senator Simpson who said that I was in the field before others arrived. Many times you have the feeling you set the table and someone else comes, sits down and you no longer feel you are a part of that group. But I still feel myself very much to be in the realm of an environmentalist.

In terms of the role of the Federal Government, I think it certainly has to be maintained. That role has been fully exercised, I think, by providing a complete set of legislation that goes across the board. It covers just about any kind of ill that can come to our environment. Many of these ills are transboundary issues between States. With many of these things you have to be careful not to set a precedent which would allow industry to flock to one State because the standards are different. So there are some very good reasons for having national laws.

I think the enforcement and the regualtory details that carry out the intent of these national acts can be best managed at the State level.

The Safe Drinking Water Act is a good example of that kind of thing. Here we have set national primary drinking water standards for the quality that we expect to have throughout America. We expect the water industry, as it has in the past, to meet those kinds of primary standards. The regulation of those standards, I think, can best be achieved at the State level.

Senator **Stafford**. You have managed to answer my second question before I could ask it. To what extent did you participate in the development of the administration's bill to amend the municipal construction grant program?

Dr. **Hernandez**. I didn't participate in any way, Senator Stafford. I have reviewed it and would be pleased to answer any questions you may have.

Senator **Stafford**. Then I do have a question, a followup. That is, if you care to comment on this point, what do you see as the principal defects, particularly in management and financing of this enormous public works program, to achieve the improved water quality? How would you personally approach possible solutions?

Dr. **Hernandez**. I think it is a little early. I really would like to hear the debate that takes place here in Congress as this piece of legislation moves along.

I have reviewed the need statements, dollars, that we have put into different categories saying this is what we need to get there. I think by and large those can be accomplished within a timeframe if we spend moneys at the $2.4 billion level.

I think we are going to have to encourage the States and the municipalities to take on a bigger share of the responsibility. I think we can do some things better, though, in terms of achieving water quality by making some changes in our expectations and actions.

Senator **Stafford**. You are probably aware that this Senator has some concern in going into the wastewater treatment grants program in the future, that if we think too heavily about cost effectiveness and so on, we may be heading for very large cities and very large plants and beginning to orient away from urban America. I would hope that you would think in terms of a balanced program for America in terms of the water improvement programs and that those myriad little towns and cities of America are as important in our national achievement of clean water as are the big cities. Would you agree with me on that?

Dr. **Hernandez**. I think that the goal of the President's bill, which you have received, is that those areas which offer the greatest promise for improvement in water quality would be attacked first. There are some provisions in there, as I recall, for setting aside some moneys for rural areas. I would hope that, while the set-aside may not be sufficient in some States, through time and by encouraging States to make their own allocations, we would achieve the goals that you speak of.

Senator **Stafford**. Do you think a uniform national technology standard of secondary treatment is the best way to achieve our water quality objectives? If you have some doubts, could you tell us what approach you might prefer for achieving control of municipal wastewater discharges?

Dr. **Hernandez**. Senator, in the early days of Federal contribution to the construction of municipal plants, when we started Public Law 660, and that was back in about 1956, we did have a secondary treatment goal. So I certainly support that.

I would like to see us reevaluate that secondary treatment goal. I think that in some respects, the definition of secondary treatment may not be realistic and may not be needed to the full extent. I think it could stand some examination. I think that when we do that, provide some flexibility there, we can manage to spend our money in a better way.

Senator **Stafford**. Thank you very much, Doctor. The committee has received your financial disclosure forms and finds them to be in order.

For the record, do you have any financial interests or activities that you believe could impair or compromise your service in the position for which you have been nominated?

Dr. **Hernandez**. No, sir, I don't think so. I was asked to recluse myself in a couple of areas. I would like to tell the committee, and in the nature of a public statement, say these are areas where I would not be active.

I have been a consultant to Cornell University in a program under the Safe Drinking Water Act. That report will probably come to EPA and to the Congress because it deals with the rural water quality survey. So I won't take any action on that one.

I, of course, worked on the draftes of it and would be very careful not to make any kinds of comments to my colleagues at EPA about it because I could be construed as having a bias of some kind.

I think that is the only area where I have recently been involved.

Senator **Stafford**. One final traditional question. Doctor, would you be willing, whenever this committee or any other Senate committee felt it necessary to have you appear as a witness, to appear as a witness before this or any other Senate committee?

Dr. **Hernandez**. I would be very pleased to, Senator Stafford. The treatment that I received in my visits with you has made me enjoy your company, and I look forward to visiting with you on occasions on various issues.

Senator **Stafford**. We will try to keep it that way.

Thank you very much, Doctor.

Senator **Domenici**. It might not always be that nice, though; right, Mr. Chairman?

Senator STAFFORD. We will be polite and high level, even if we disagree.

Senator Domenici, do you have any questions?

Senator DOMENICI. I yield to Senator Chafee.

Senator CHAFEE. I don't have any questions. I pass at this time, Mr. Chairman.

Senator STAFFORD. Senator Chaffee, I put your opening statement in the record.

Senator CHAFEE. Thank you.

Senator STAFFORD. Senator Gorton?

Senator GORTON. I will pass at this point.

Senator STAFFORD. Senator Abdnor?

Senator ABDNOR. No questions.

Senator STAFFORD. You can see, Doctor, you are in great shape.

Dr. HERNANDEZ. This is really an excellent committee.

Senator DOMENICI. I have one. I was only yielding. I didn't say I didn't have any.

Dr. Hernandez, I assume you have read, as we have, about the intentions of Secretary Watt to establish a high-level water policy organization within the Department of Interior. It has been called by various names and described in various ways, but might I ask you, based upon your experience with the Environmental Protection Agency and your experience in water issues, does not the Environmental Protection Agency have a vital role to play in the establishment of any water policy for this country?

Dr. HERNANDEZ. Yes, sir. I think we will have an opportunity to have an adequate input through the subcommittees and task forces that will be formed under that Cabinet committee.

Senator DOMENICI. What makes you so positive of that?

Dr. HERNANDEZ. We have been invited and have participated in the first such subunit already. I understand that it is the intent of that Cabinet group that we will be invited to participate when EPA has a role in whatever issues are to be discussed.

Senator DOMENICI. Dr. Hernandez, I assume you know that the water grant program that comes from this committee has reached levels of funding that make it more of a construction program than either the Bureau of Reclamation or the Corps of Engineers with reference to water. Is that not correct?

Dr. HERNANDEZ. I think it is on the same level or bigger perhaps than some—certainly the Corps of Engineers has a larger construction program, or from time to time, does have.

Senator DOMENICI. It seems to this Senator that somehow or other whenever we talk about water policy, we seem to talk about the Corps and the Bureau of Reclamation, but we don't talk about the $2 billion plus that we are spending for water pollution abatement—at least that is the avowed goal—of this grant program under EPA. It is very vital, just as vital as some of the major programs that the Bureau of Reclamation has, to an integrated national policy, is it not?

Dr. HERNANDEZ. Senator Domenici, I think that is correct. I believe that the forum for carrying those ideas though into the Cabinet council will exist. The first subgroup that we put together, or I should say that has been formed by the Cabinet task force, has been one that involves Agriculture, that involves EPA, the Corps of

Engineers, and Interior. I think that process will provide us with ample opportunity. There are just four people in that group. We are looking at the duties right now of the previous water quality councils, water managment groups, to see how they would best be carried out in the future.

Senator **Domenici**. I have no doubts that you are aware of it. The reason that I bring it up is because I would expect the Environmental Protection Agency to take a very positive role in terms of defining the future expenditures that we are going to allocate. If it gets back up to $2.4 billion and stays there on a regular basis, it surely ought to be considered as part of an intergrated water policy. I don't think that will happen without the affirmative involvement of the Environmental Protection Agency in those discussions.

I bring that up merely to call it to your attention. I understand, based on your background, you couldn't help but feel that a program of that size shouldn't be isolated and considered all by itself while we are looking at a national water policy. Am I correct in assuming that?

Dr. **Hernandez**. I think you are absolutely correct. I believe that sometime in our past, some of the agencies of Government with responsibilities for building large water projects were not as cognizant of the need to protect water quality as they now are. I think there has been that concern that carries over in each of these areas now.

However, I do think EPA will have an ample opportunity within the framework that has been established in the administration to carry that strong point of water quality maintenance.

Senator **Domenici**. One last question, Doctor, with reference to the application of the Environmental Protection Agency's regulations in the field. I asked this same question of the nominee for the Director's position. It seems to this Senator that frequently while we pride ourselves in taking some kind of oversight activity, that frequently we are not aware of the various difficulties that the EPA is having in the field in carrying out mandates, rules, regulations and decrees in congressionally enacted laws. I, for one, feel that we ought to be advised on a regular basis when you are running into extreme difficulty with deadlines and with compliance. It seems to me that we frequently find out too late that deadlines can't be met, that you can't get things done in a timely manner, that those we are regulating really can't comply on time or you are running into some enormous problems that you all might think we didn't even understand.

I, as one Senator, would just ask if you feel any compulsion about advising the chairman of the committee of jurisdiction, or the subcommittee chairman, as you run into those kinds of problems? Would it bother you to tell us about those in advance so that we don't get up to deadlines that are unachievable and disasters are imminent and that we then have to act with haste or dispatch or you have to do some kind of adjusting? Does that kind of a scenario bother you as an administrator?

Dr. **Hernandez**. Not at all, Senator. As a matter of fact, Mrs. Gorsuch and I have discussed that very issue, and it is her intent to come before this committee with that sort of problem. Looking down the road, I see this vast array of deadlines that we are facing. I am not talking about some place in January of next year but 1 week from today, 2 weeks from today. When you look at the number of regulations that are coming before us and the rapidity, I really feel communication will be stressed. I know that we will come back to you and talk to you about those issues as they arise.

Senator **Domenici**. I have no further questions. Thank you.

Senator **Stafford**. Senator Chafee?

Senator **Chafee**. Dr. Hernandez, among the changes that are being suggested in the Clean Water Act by the administration is one dealing with innovative and alternative technology that would, in effect, discourage or provide a considerable discouragement for the development of innovative and alternative technology. I worry about that because I think in this field of water treatment there has not been enough innovative technology.

Getting back to the question that Senator Domenici mentioned about the water construction projects tying in with the whole water resources program, I saw in Los Angeles where they are using their treated water and they are pumping it back into the ground and, as I recall, using about 13 percent, something less than 20 percent, but being able to recycle it instead of pumping it out into the ocean. It seems to me as the country gets increasingly short of water, more and more of this has to be done. Waste water recycling should be encouraged. Yet with the cuts in the I and A funds, I don't think we are going to get into that. Would you comment on that?

Dr. **Hernandez**. I really don't think that those cuts are going in any way to inhibit the States from making decisions on using their moneys. As I remember, the provisions in the President's proposed legislation are that a State may take I and A funds out of the dollars they are given and can use up to 3 percent of that money to make up the additional 10 percent to provide grants of up to the 85 percent level.

Senator Chafee. Right.

Dr. **Hernandez**. I really think that is going to provide for those States, for most States. I think that will meet their needs.

Now if it doesn't, I think that when we go through the discussion of that piece of legislation, we should take a look and see how many communities in a particular State might in fact try to use some kind of unusual technology so that we can make sure the funds are available to them. But I think within each State they have the opportunity to set that money aside if they so choose.

Senator **Chafee**. That is right. That is the so-called discretionary set-aside.

Dr. **Hernandez**. Yes. And I really favor that because it gives us flexibility.

Senator **Chafee**. I regret to say that I think although we are all for the States doing something, that what will happen is the States will have so many demands on them from the regular construction requirements that they will be reluctant to use the discretionary funds. If we are going to advance in this area and give discretion to the States and more authority, that's one thing, but what I really hope is that we can use more innovative and alternative technologies in the future.

It seems to me as I review it, and we will have oversight hearings on this whole program—we are starting now, actually—there has been a minimum of that. Is that your experience?

Dr. **Hernandez**. I think it has happened for about three different reasons, Senator Chafee. One of them is a relatively new provision, as I recall, that came in 1977 or 1978, which put it into action. There is such a time lag from when you conceive of something to when it gets into the planning phase and then finally into construction, that the 2-year period has not really given us a really good opportunity to see what may happen down the road.

I think the people have a tendency on a new program like that to be very, very careful. I am talking about bureaucrats and administrators. I think this is one of those where we are asking the communities and the engineers to gamble. I think EPA has to take some gambles and say OK, that is great. Let's try that. Let's not set up 10 more hurdles because we are going to increase your money by some small amount. Let's make this an easy process to go through, not a difficult process to go through.

I think we may have created an extra set of hurdles that may have impeded that.

I spoke earlier about looking at some redefinitions of what secondary treatment is. I think if we do that, then we may arrive at some flexilibity that will make innovations possible. We have inhibited them in the past by being overly restrictive in our definitions.

Senator **Chafee**. I think you are right. I think that one of the discouragements for taking the extra 10 percent was the extra delay you went through which gobbled up the extra 10 percent in inflationary increases.

Dr. **Hernandez**. Right.

Senator **Chafee**. So you are right. Thank you. We look forward to working with you.

Senator **Stafford**. The chair is very glad to see that the ranking member of the committee, Senator Randolph, for so many years chairman and guiding light, is here. Senator Randolph, do you have any statements you care to make or questions to ask?

Senator **Randolph**. Mr. Chairman, you are very generous, and I am delighted to work with you and help you as well as other members of this committee. It was impossible for me to be here earlier, but I do desire, with your permission, and the permission of the other members of the committee, to present an opening statement. Would that be agreeable?

Senator **Stafford**. Yes, sir, it certainly would.

OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S. SENATOR FROM THE STATE OF WEST VIRGINIA

Senator **Randolph**. Thank you very much.

Mr. Chairman, we welcome Dr. John Hernandez to this hearing on his nomination by the President to be Deputy Administrator of the Environmental Protection Agency.

Dr. Hernandez and I have talked and I have reviewed his background, including academic and technical credentials. He brings to his new position a scientific prespective which should be helpful in addressing issues before EPA, issues which often have a scientific relationship.

The nominee was present in the audience on Friday when Committee members heard testimony on the nomination of Anne Gorsuch to be EPA Administrator. That experience gave him a good perspective on the issues that Members of the Committee consider important in executing the environmental laws adopted by the Senate.

Thank you, Mr. Chairman.

Senator STAFFORD. Thank you, Senator Randolph and we are glad that you were able to attend the hearing.

Senator RANDOLPH. Mr. Chairman, I wonder if I might ask Dr. Hernandez a question or two at this time?

Senator STAFFORD. Go ahead.

Senator RANDOLPH. Dr. Hernandez, your testimony, which as I say I have not been able to hear, but checking with staff I know you have given it, emphasizes the scientific basis for EPA's work. What is your opinion of the method by which the national ambient air quality standards are set? I follow with these words: Available health effects. Information suggests harm or risk to health at very low levels of exposure. What better use can be made of these health effects data?

Dr. HERNANDEZ. Senator, as I understand the process, the Agency comes up with a set of criteria documents, for primary ambient air standards, and these documents are reviewed internally and then through the auspices of the Science Advisory Board, or through subcommittees of the Science Advisory Board. That process is now ongoing for some pollutants.

During this process there are groups in our society that follow a parallel course. I have been reading, and I think I have it in my briefcase, a review by one of the public health groups of the particulate emission standards. They have gone through a parallel study in looking at health effects records that are available from all over the world. In many cases they find emission levels that exceed those that we have here in the United States. You can then easily study the impact of higher levels on larger groups. Some studies are on children as they are not subject to the effects of smoking. It is the summation of the information that comes out of those studies and reviews that finally goes to the Administrator. The Science Advisory Board and others come up with a recommendation based on those kinds of studies, and their recommendations go to the Administrator.

Senator RANDOLPH. Have you explained the process?

Dr. HERNANDEZ. I hope so.

Senator RANDOLPH. We will let it stand at that. I am not sure you have, but it is all right. We will come back to that, perhaps.

Dr. HERNANDEZ. OK.

Senator RANDOLPH. How do you feel about the policy of deadlines to force; let's say, the development of further technology?

Dr. HERNANDEZ. I don't think you can wait around and study everything forever, but I do believe that if we set some priorities for the future and embark on longer term research—3, 5 years; in some instances where there is great variation within the aspect that we are studying it may have to run for a longer period than that—that if we set a target date for the completion of that kind of basic study, we will be able to move and make decisions on some of these things down the line. I think we have failed in the past to take adequate precautions, given the kind of in-depth study they needed.

Senator **RANDOLPH**. Mr. Chairman, as an aside, and perhaps very much aside, but I cannot fail to mention that 35 years ago, Dr. Hernandez, we had the knowledge with which to set in motion a substantial, if necessary, a very huge, synthetic liquid fuels program. It was known then, sir. There are refinements, yes, that can take place, and nothing was done.

Now we come back in 1979 and 1980 and we begin to think about spending billions of dollars to find out how to process synthetic liquid fuels. That is not the problem. We need the construction of the plants. Senator Domenici, I hope you believe partially with me on this subject because you have been certainly working on it.

I just am discouraged sometimes at this going over it, going over it, going over it, what has been done, what has been determined as feasible, and yet we are starting apparently anew now to find something else. I believe in progress and development. Of course, that is the way the space shuttle goes up. I know all of this.

Dr. **HERNANDEZ**. I think you are talking about the Lerge method of 1935?

Senator **RANDOLPH**. The German process.

Dr. **HERNANDEZ**. Yes.

Senator **RANDOLPH**. That was effective; yes. We made the aviation fuel, for example, from coal, let's say, in 1943. When you think about it, what are we running into over a long period of time?

Dr. **HERNANDEZ**. I think on the ambient air quality standards we have these standards. They are in effect. This is one of those periodic reviews that you have to make. The data examined in the public health report I was speaking of is from only 1968. This is just a review during that period and is only taking new data and bringing it up to date. I think in those things where we don't have information now, the process I described has to be a longer term one.

Senator **RANDOLPH**. Thank you very much. That is all.

Senator **STAFFORD**. Thank you very much.

Senator Gorton?

Senator **GORTON**. One specific question, Mr. Hernandez. Given the Administration's 1982 budget proposals with respect to the control of noise, what Federal function do you see in connection with noise control?

Dr. **HERNANDEZ**. Senator Gorton, that is one of those areas where I will admit a great deal of weakness. As I understand the budget, it will be a gradual phaseout of our current activities, and that programmatically, we believe that most of these things are best regulated at the State level.

Senator **GORTON**. That is what I was looking for. The Federal Government is going to move out of this and then the States and communities should be allowed to regulate them as they will?

Dr. **HERNANDEZ**. Yes, sir.

Senator **GORTON**. Thank you.

Senator **Stafford**. Senator Abdnor?

Senator **Abdnor**. Thank you, Mr. Chairman. I just want to pick up on a brief exchange here between Senator Domenici and Dr. Hernandez. I just wanted him to know today I did introduce a water policy review bill. I hope you will look it over with interest and care because it is along some of the same lines you were talking about.

There is one other thing that is interesting. You have a background in a State that is overall rather sparsely settled, like the State I represent. Over the years, some of the regulations that are formed and put into effect principally are there to take care of some of the more major problems in the major cities. I speak of smaller towns of 300 and 400 people that has to try to abide by those same regulations which are in many ways completely ridiculous.

Do you think in the future there will be some attention given to the effect of a regulation, not only how it affects the problem of trying to cure it but maybe the problems they are creating by it in other parts of the country, like down in New Mexico or more rural States. I am sure you must have noticed this in past years.

Mr. **Hernandez**. Senator Abdnor, let me give you one example that comes to my mind specifically. For years South Dakota led the Nation in the use of lagoons as a treatment technique. Those lagoons, when they do result in a discharge, which is not at all times of the year because evaporation takes care of the flow into them during some times, it is hard for communities to meet the secondary treatment standards because the algae that grows in those ponds flows out and you end up with a BOD load or suspended solids load. I think if we look at a redefinition of secondary treatment we would eliminate those problems we have with little communities where ponds are a really good treatment technique.

I am also worried a little bit about the application of the Safe Drinking Water Act. I am talking about the sampling process and the kind of thing that imposes a burden on them. You bring up a good point and I think it is one of those things we should keep in mind when we regulate.

Senator **Abdnor**. I had to smile when you said that. I was thinking specifically of a town of about 375 people and a problem they had several years ago. They had a lagoon system, which was working effectively, which they put in for not too many dollars. Yet about three or four times a year when it snows heavily or rains heavily they may have an overflow discharge. Because of that, they were asked to invest one hundred-some thousand dollars I think in an auxiliary lagoon. They couldn't understand why the town was objecting because I think the State and Feds picked up 75 or 85 percent of the cost.

They were supposed to send in samples regularly of their discharge. They didn't have it. They had an editorial in one of the bigger city newspapers where the mayor decided he would blow a whistle so many times so everybody could flush their toilets enough times to hopefully build up excess water. It is kind of ridiculous, some of those restrictions and regulations.

Thank you.

Dr. **Hernandez**. Thank you, Senator.

Senator **Stafford**. If there are no further questions, at the moment, if we can just stand at ease for a minute, we believe we will have a quorum here very shortly.

Senator **Domenici**. Mr. Chairman, I was going to ask him one further question.

Senator **Stafford**. I am glad to have that done.

Dr. **Hernandez**. Would you go look for that quorum, sir?

Senator **Domenici**. You won't mind this one, Doctor. I understand that the President's budget is going to get the EPA out of noise abatement matters. I understand from very good sources that you are somewhat of an expert on noise pollution that is caused by country and western music. It that right? Don't you think that even if we get out of noise abatement the Federal Government ought to stay in that area, or what do you think?

Dr. **Hernandez**. I think probably, Senator, we should send field investigators out on occasion to see what is happening in the hinterland.

Senator **Stafford**. Senator Domenici, do you have any more equally serious questions?

Senator **Domenici**. I can't think of any, Mr. Chairman.

Senator **Stafford**. Senator Burdick, do you have any questions?

Senator **Burdick**. No.

[Whereupon, at 3:33 p.m., the committee was recessed, to reconvene at the call of the chair.]

[Letters supplied for the record and Dr. Hernandez' biography follow:]

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

"Putting It All Together For The Engineer"

NSPE

March 3, 1981

Honorable Robert T. Stafford, Chairman
Committee on Environment and Public Works
4204 Dirksen Senate Office Building
Washington, D. C. 20510

MAR 1 9 1981

Dear Chairman Stafford:

It is my privilege, on behalf of the 80,000 member National Society of Professional Engineers, to give complete support to John W. Hernandez, Jr., P.E. for the position of Deputy Administrator of the Environmental Protection Agency.

Dr. Hernandez, a registered engineer, in addition to a B.S. in Civil Engineering, holds two Master of Science degrees in Sanitary Engineering and Environmental Engineering and a Ph.D. in Water Resources. Clearly, his educational background qualifies him for the issues he must face as Deputy Administrator.

Educational degrees alone, however, do not make one eligible for a task. He will bring to this position many years of "hands-on" practical experience and training in the field of environmental policy.

This experience has made John Hernandez acutely aware of the need for a balance between environmental control and growth necessary for our country. While employed by the State of New Mexico, he served as Assistant Engineer for the Engineering and Constitution Section of the New Mexico Department of Game and Fish and as the engineer responsible for the water pollution control program for the New Mexico State Department of Public Health.

Before becoming Dean of the New Mexico State University, College of Engineering, Dr. Hernandez gained more experience in the environmental field as Director of the Environmental Health Engineering Program and Acting Co-Director of the New Mexico Environmental Institute.

Indicative of his knowledge are the many publications on the effects of various elements introduced into the environment. These publications include: the Manual on the National Safe Drinking Water Act; a 1959 Purdue University thesis on the Effects of ABS on Sludge Digestion; "Economic Growth and Due Process: Two Necessary Conditions for Environmental Equity" Proceedings of the Forty-Ninth Annual Symposium of the Southwest and Rocky Mountain Division of the AAAS (1973); and, "Evaluation of the Impact of New Mexico's Environmental Regulations on Energy Costs," New Mexico Energy Institute Report No. BEF-143, with Peter Bell.

Mr. Chairman, I strongly urge the Committee to confirm John Hernandez, a man well-suited for this important position.

I respectfully request that this letter be made a part of the official record of the Committee's confirmation hearing on Dr. Hernandez.

Sincerely,

Herbert G. Koogle

Herbert G. Koogle, P.E., Chairman
Legislative and Government
Affairs Committee

EUGENE ZWOYER, *Executive Director*

AMERICAN SOCIETY OF CIVIL ENGINEERS

WASHINGTON, D. C. OFFICE
1625 EYE STREET N.W., WASHINGTON, D. C. 20006 (202) 785-4454

S-10-1

March 13, 1981

The Honorable Robert Stafford
Chairman
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The American Society of Civil Engineers strongly supports the nomination of Professor John W. Hernandez, of New Mexico, as Deputy Administrator, Environmental Protection Agency. Dr. Hernandez has been a member of our Society for the past 28 years and is a leading individual in the field of civil engineering.

In conjunction with confirmation hearings relating to Dr. Hernandez' nomination, the American Society of Civil Engineers hereby respectfully requests the opportunity to testify. We realize that the press of Committee business sometimes prevents the scheduling of public witnesses. Nevertheless, should there be an opportunity, we would be privileged to comment.

Sincerely,

BRUCE RICKERSON
Director, Legislative Services

cc: Senator Domenici
Dr. Zwoyer

The American Society of Mechanical Engineers

United Engineering Center • 345 E. 47th St., New York, N.Y. 10017 • 212-644-7722 • TWX-710-581-5267

April 2, 1981

ENVIRONMENTAL AFFAIRS COMMITTEE

Please address reply to:
Pavia-Byrne Engineering Corporation
2609 Canal Street
New Orleans, LA 70119

Honorable Robert T. Stafford, Chairman
Committee on Environment and Public Works
4204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford:

I would like to endorse and request your support of the nominations of Ms. Anne Gorsuch and Dr. John Hernandez, Jr. For the positions of Administrator and Deputy Administrator ~~of the U.S.~~ Environmental Protection Agency.

In the approximately 10 years since its founding, the U.S. EPA has grown to an agency responsible for one of the prime concerns of the U.S. populace, the protection and preservation of our Environment. In this time it has grown to an agency with 10 regional offices, 9 laboratories, many field offices and employs many thousands of people. It has obviously grown to the size where the overall responsibility must be in the hands of an extremely capable Administrator such as Ms. Gorsuch, who can and will use qualified technical people for the technical concerns of the agency. I understand from our members in Colorado who have had ample reason to follow her Legislative Career, that Ms. Gorsuch ferrets out all technical aspects of problems and is very capable of working with technical people to identify all of the problems before charting final direction.

Dr. John Hernandez, because of his background in Environmental work and his concern for environmental protection, should provide the perfect technical back-up to Ms. Gorsuch. His environmental concern is a matter of record. He became involved in the field long before it became a popular issue, and has continued in the field and broadened his scope from Sanitary Engineering to Environmental Engineering. And presently as Dean of Engineering, he has continued to keep involved in environmental work as evidenced by his publications.

I feel the combination of Ms. Gorsuch and Dr. Hernandez form a team which can properly Administer and lead the agency, so that it can continue to protect our Environment and at the same time lead us through some very necessary re-organization to bring our Environmental Control into perspective with the rest of our national goals.

Very truly yours,

Edgar H. Pavia, P.E.
Chairman

cc: Committee Members

American Water Works Association

March 5, 1981

The Honorable Robert T. Stafford
Chairman
Committee on Environment
and Public Works
U. S. Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The American Water Works Association (AWWA), a non-profit, scientific and educational society of over 32,000 members who provide 70% of this nation's drinking water, strongly urge your committee to recommend confirmation of Ann M. Gorsuch and John W. Hernandez, Jr. for Administrator, and Deputy Administrator, respectively, of the Environmental Protection Agency.

AWWA's membership includes more than 3400 community water suppliers that have, for over 100 years, held as a common concern, provision of the best possible water to the public at a reasonable cost. Safe water for human consumption requires prudent protection of raw water sources; use of practical, economical technology; the knowledge of and a reasonable approach to potential health hazards; recognition of competing values and interests; and consideration of the frequently costly, and sometimes negative impact, of unnecessary regulation and government controls.

It is the opinion of this Association that Mrs. Gorsuch and Mr. Hernandez hold the aforementioned as basic tenets and offer to this nation the dedication, knowledge and experience necessary to efficiently manage the complex issues and responsibilities inherent to management of the U. S. Environmental Protection Agency. In combination, their legal and engineering talents will provide optimum effectiveness in this key regulatory agency.

Both Mrs. Gorsuch and Mr. Hernandez have strong backgrounds in state administration. The experience of both recognize the differences between regions of this nation and the need for accommodation of these with greater state and local involvement in, and control of, environmental programs.

Mrs. Gorsuch's tenure in the Colorado legislature, a state diverse in natural resources and sensitive to ecological threat, required her interaction with government at all levels. Her intelligent leadership in key committees involving finance, air pollution control and hazardous waste, and the review of obsolete, duplicative or unnecessary statutes, will serve her, and this country, well, as Administrator of EPA.

Mr. Hernandez, an engineer, educator and senior military officer in the U. S. Naval Reserve, has extensive background in state water pollution control, environmental health, research and fish and game protection. In support of Mrs. Gorsuch, his capabilities add the dimension and blend of expertise necessary to assure knowledgeable, wise and balanced management of this nation's environmental protection program.

In view of the above, we urge your Committee to unanimously approve the nomination of Ann M. Gorsuch and John W. Hernandez and recommend early confirmation by the Senate.

Sincerely,

W. H. Miller

W. H. Miller
Chairman
Water Utility Council

WHM/ew

BR
BURNS AND ROE, INC.
ENGINEERS AND CONSTRUCTORS • 550 KINDERKAMACK ROAD • ORADELL, NEW JERSEY 07649

Kenneth A. Roe
Chairman and President

March 25, 1981

Honorable Robert T. Stafford, Chairman
Committee on Environment and Public Works
4204 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Stafford:

Shortly, the Senate will begin hearings on the confirmation of Mrs. Anne Gorsuch as Administrator of the Environmental Protection Agency and Dr. John Hernandez as the Deputy Director of the EPA.

My deep involvement with environmental issues for many years has been not only in the conduct of my consulting engineering business, but also in my contact with engineers throughout the country as the first Chairman of the American Association of Engineering Societies.

This broad exposure to the problems of resolving energy, productivity and environmental issues has strengthened my conviction that strong leadership of the EPA is essential. I believe that Mrs. Gorsuch and Dr. Hernandez can provide that leadership with the combination of proven management skills and technical background. I, therefore, urge your Committee to support the endorsement of these nominees by the Senate.

Sincerely yours,

Kenneth A. Roe

KAR:ml
cc: Members of the Senate Committee on Environment and Public Works

New England Water Pollution Control Association, Inc.

President..........M. Hamdy Bechir, North Haven, CT
1st Vice Pres...............David K. Blake, Boston, MA
2nd Vice Pres.............Allen F. Goulart, Boston, MA
Treasurer.............Clifton R. Grinnell, Danvers, MA
Advisor....................Martin Weiss, Boston, MA
Journal Editor........Michael D. Giggey, Topsham, ME
Fed. Dir..................Adam S. Nisbet, Pawtucket, RI

Director......................James E. Leu, Boston, MA
Director...........Raymond F. Bahr, Wallingford, CT
Director..........Robert W. Livingston, Concord, NH
Director.....................Kirk J. Laflin, Portland, ME
Director..............Raymond J. Lynch, Newport, RI
Director...................Brent R. Herring, Barre, VT
Fed. Dir.............Robert E. McQuade, Andover, MA

Aldene E. Gordon, *Exec. Sec.*
P.O. Box 138, Rowley, MA 01969
Telephone: 617-948-3822

February 25, 1981

The Honorable Robert Stafford
United States Senator
Chairman, Environment & Public Works Committee
Dirksen Senate Office Building
Washington, D.C. 20510

Re: Dr. John W. Hernandez
EPA Deputy Administrator -Designate

Dear Senator Stafford:

I have just learned of President Reagan's nomination of Dr. John W. Hernandez to the position of Deputy Administrator of the Environmental Protection Agency. May I add my strong and unequivocal endorsement as well as that of our Association to this nomination.

I have personally known John Hernandez since 1960 when he was attending Harvard while I attended MIT and we worked closely together on the Harvard-MIT-Tufts environmental engineering seminar series. During my tenure as Assistant Professor at Oklahoma State University in the mid 1960's, I had the good fortune of working with John on regional environmental matters related to the southwest region.

Dr. Hernandez has always conducted himself in a manner reflecting the highest standard of ethics and is a credit to himself and the profession. The National environmental program is a very complex, highly technical program that requires an extremely competent leader and Dr. Hernandez is eminently qualified to guide the environmental program towards the lofty goals set by the Congress to benefit our nation.

The Executive Committee of the Association and myself personally strongly endorse Dr. Hernandez for the position of Deputy EPA Administrator.

Very truly yours,

NEWPCA

M Hamdy Bechir

Dr. M. Hamdy Bechir
President

MHB/lhz

VITA

John Whitlock Hernandez, Jr.

August, 1980

PERSONAL

Age:	Born in Albuquerque, New Mexico, August 17, 1929.
Address:	P.O. Box 3196, Las Cruces, New Mexico 88003 (mailing). 510 West Court Street, Las Cruces, New Mexico.
Telephone:	(505) 646-3463 (office) or (505) 524-3809 (home).
Family:	Married to Dr. Frances Hernandez, Professor of English, University of Texas at El Paso, since 1951; no children.
Physical:	Six feet tall; 180 pounds; excellent health.
Position:	Professor of Civil Engineering (July, 1968--), New Mexico State University. Registered Professional Engineer and Land Surveyor in New Mexico (1957).

EDUCATION

B.S.	Civil Engineering, University of New Mexico, 1951.
M.S.	Sanitary Engineering, Purdue University, 1959.
M.S.	Environmental Engineering, Harvard University, 1962.
Ph.D.	Water Resources, Harvard University, 1965.

PROFESSIONAL EXPERIENCE

Academic Assignments

Instructor, evening and Saturday course in surveying, College of Santa Fe, 1959-61.

Teaching Fellow, Harvard University, 1964-65.

Professor of Civil Engineering, New Mexico State University, 1968--; Associate Professor, 1965-68.

Research Professor, Facultad de Ciencias y Matematica, Universidad de Chile, Santiago, March-December, 1970.

Visiting Professor of Civil Engineering, Bogazici University, Istanbul, Turkey, 1973-74.

Co-Director, Southwest Resource Center for Science and Engineering, 1979-80.

Dean of the College of Engineering, New Mexico State University, 1975-80.

Administrative

U.S. Navy

Staff Engineering and Material Officer, Transport Division 22, 1951-54.
Commanding Officer, Construction Battalion Unit 8-20, El Paso, Texas, 1968-69.
Captain, Navy Civil Engineering Corps Reserve, assigned as the Commandant, Eighth Naval District, representative to Adjutant General of the State of New Mexico, 1974—.

State of New Mexico

Assistant Engineer, Engineering and Construction Section, New Mexico Department of Game and Fish, 1954-55.
Associate Engineer, Technical Division Reports and Investigation Branch, Office of the State Engineer of New Mexico, 1955-57.
Engineer, responsible for the water-pollution control program for New Mexico, State Department of Public Health, 1957-62.

New Mexico State University

Director, Environmental Health Engineering Program, 1966-70.
Acting Co-Director, New Mexico Environmental Institute, 1971-73.
Dean of the College of Engineering, 1975-80.

Consulting

U.S. Navy, 1964-66.
United Nations, 1971.
New Mexico Municipal League, 1970-75.
New Mexico Game and Fish Department, 1971-73.
City of Gallup, 1971-73.
Resources for the Future, 1972.
Environmental Protection Agency, 1978.

Research Studies

Effects of synthetic detergents on anaerobic digestion of sewage sludge (1958-59); supported by the U.S. Publich Health Service.

Water-pollution problems caused by New Mexico's uranium mills (1959-61); supported by the State of New Mexico.

Evaluation of the rate-limiting step in the uptake of soluble organic pollutants by biological mass in waste-water treatment (1962-65); funded by National Institute of Health.

Synthetic runoff hydrographs for urban areas (1965-66); funded by the New Mexico Water Resources Research Institute.

Development of water-quality standards of New Mexico's interstate streams (1966-67); funded by New Mexico Environmental Improvement Agency.

Multi-university, interdisciplinary evaluation of the management of the water resources of the Pecos River (1967-70); supported by state and Federal water-resources research funds.

Urban land-use management in New Mexico (1968-69); funded under Title I, Higher Education Act, 1965.

Management of the urban environment in New Mexico (1969-70); funded under Title I, Higher Education Act of 1965.

Development of a multi-university, interdisciplinary institute for environmental research and continuing education programs (1971-73); funded by Title I, Higher Education Act of 1965.

Liquid-solid separation and modifications of the standard BOD test, Bogazici University, Istanbul, Turkey; supported by the National Science Foundation (1973-74).

Base line water-quality survey on the Rio Grande Project Lands (1974-76); funded by the U.S. Bureau of Reclamation.

Development of a method of evaluating the effect of environmental regulations on the cost of energy (1975-76); supported by the State of New Mexico.

Professional Societies

American Society of Civil Engineers, 1954--.

National Society of Professional Engineers, 1955--.

New Mexico Society of Professional Engineers, 1955--; Chairman of publications board, 1959-60; secretary of Santa Fe-Los Alamos chapter, 1957-58.

Harvard Engineering Society, 1961--; president of chapter at Cambridge, Massachusetts, 1964-65.

Rocky Mountain Water-Pollution Control Association, 1955--; secretary-treasurer, 1961-62; trustee, 1969-70.

American Water Works Association, 1954--; member of Education and Training Committee, 1976-78.

American Public Works Association, 1976--.

Society of Hispanic Professional Engineers, 1977--.

Academic Governance Responsibilities

Faculty Senate, 1966-71; 1975-80.

Advisory Council on Administrative Policy, 1967-69; chairman, 1969.

Faculty Improvement Committee, 1968-70.

Faculty Senate Student Affairs Committee, 1970-71.

Faculty Senate Committee on Loans, Scholarships, and Awards, 1969-70.

Industrial Hygiene and Safety Committee, 1966-75.

Quality of Life Committee, 1972-73.

Faculty Senate representative to the Associated Student Senate, 1972-73.

Tenure and Promotion Committee, College of Engineering, 1975.

Campus Planning Committee, 1976-79.

Deans Council, 1975-80.

PUBLIC SERVICE AND CIVIC ACTIVITIES

National

New Mexico delegate to the White House Conference on the Aging, 1961.

Advisory Committee on Bilingual Education to the Commissioner of Education (HEW), 1968-71.

Advisory Committee on the Multiple Uses of U.S. Forests to the U.S. Secretary of Agriculture, 1968-71.

Advisory Committee for Remote-Area Health Program, National Aeronautics and Space Administration, 1969-70.

U.S. Public Health Service Environmental-Health Study Team, 1969-72.

Member of fifteen-man National Safe Drinking Water Advisory Council to the Administrator of the U.S. Environmental Protection Agency, 1975-77.

Member of Committee on Minorities in Engineering, Assembly of Engineering, National Research Council, 1975-80.

U.S. Advisory Committee, International Institute for the Application of Systems Analysis, National Academy of Science, 1976--.

Committee on Arid Lands, American Academy for the Advancement of Science, 1979--.

Executive Council, Institute for Municipal Engineers, 1979--.

Latin-American Advisory Committee, Council for International Exchange of Scholars, 1980--.

U.S. delegation to U.S.-Mexico Consultation on Arid Lands Management and Desertification Control, 1980--.

Committee on Technical Hazardous-Liquid Pipeline Safety Standards Committee, U.S. Department of Transportation, 1980--.

State and Regional

Governor's Policy Board and Technical Advisory Committee on Air and Water Pollution, chairman, 1969-71.

New Mexico Health Manpower Advisory Committee, 1968-71.

New Mexico Conservation-Coordination Committee, president, 1969-70.

Governor's Advisory Board for Planning and Programming, 1969-70.

New Mexico Republican State Central Committee, 1966-68.

Governor's Committee on Economic Development, 1967-70.

Technical Advisory Committee on Air Quality, 1968-73.

Regional Medical Program, Advisory Group, 1971-75; board of directors, 1975-76.

Ad Hoc Technical Advisory Committee on Water Quality, 1972-73.

New Mexico Legislative Committee on Land-Use Policy, 1972-73.

Board of directors, Regional Environmental Education, Research, and Improvement Organization (REERIO), 1971-73.

Governor's Advisory Committee on Water Quality to the New Mexico Environmental Improvement Agency, 1974-77.

Governor's Task Force for the National Solar Energy Research Institute, 1975-76.

Governor's appointee to the New Mexico Judicial Standards Commission, 1980—.

Personnel-Assessment Center Panel, City of El Paso, 1980—.

Civic Activities

Harvard Club of New Mexico, 1965—; director, 1969-70.

Board, Planned Parenthood of Dona Ana County, 1967-70, 1972-73.

Rotary Club of Las Cruces, 1966—; director, 1972-73, 1975-76.

Dona Ana County-City of Las Cruces Extra-Territorial Zoning Commission, 1974-75.

Southern Rio Grande Council of Governments, Technical Advisory Committee; chairman, 1972-73, member 1974-75.

Honors and Awards

Sigma Tau and Tau Beta Pi, Engineering Honor Societies.

Sigma XI, Honor Society for Research Scientists.

Chi Epsilon.

New Mexico Water and Sewage Works Association: life membership award.

Letter of commendation from President Nixon for exceptional service in the field of air and water pollution, October 13, 1970.

Engineer of the Year Award, 1978, by the New Mexico Society of Professional Engineers.

Governor of New Mexico: Distinguished Public Service Award, 1980.

PUBLICATIONS

Dissertations, Books, Manuals

The Effects of ABS on Sludge Digestion. Thesis: Purdue University, 1959.

Rate-Limiting Step in the Uptake of Soluble Organics by Heterogenous Bacteria between 10° and 70° C. Dissertation: Harvard University, 1965.

Manual on Urban Land-Use Management for New Mexico Municipalities. Las Cruces: New Mexico State University, 1969. Second edition, 1972. Chapters on land-use planning translated into Spanish, 1973.

Manual on the National Safe Drinking-Water Act, prepared for a training seminar of the U. S. Environmental Protection Agency, March, 1976 with Dr. W.A. Barkley.

Journal Articles and Proceedings

"The Effects of ABS on Anaerobic Digestion," *Water-Pollution Control Journal* (December, 1960). With Professor Don Bloodgood.

"Free Energy as a Parameter in Biological Treatment," discussion in *Sanitary Engineering Journal*, American Society of Civil Engineers (April, 1963).

"Treatment of Shipboard Wastes," *Proceedings of Seventeenth Annual Purdue Industrial Wastes Conference* (1965). With Harold Singerman and Ed Kinney.

"Recent Legislation Affecting the Highway," *Proceedings of the New Mexico Highway Conference*, NMSU Engineering Experiment Station (1966).

"Consequences of New Mexico Water-Quality Standards on Interstate Streams," *Proceedings of the Twelfth Annual New Mexico Water Conference* (1967).

"A Solution to the Surface Run-off Problem," *Journal of the Hydraulics Division*, American Society of Civil Engineers (November, 1967). With Warren Viessman and Ahmed Abdelrazaq.

"Future Municipal, Domestic, and Industrial Water Demands in New Mexico," *Proceedings of the Thirteenth Annual New Mexico Water Conference* (1968).

"Land-Use Control through Zoning," *Proceedings of the First Annual Conference on Land-Use in New Mexico* (1969).

"Design of Tube Settlers," *Proceedings of the Purdue Industrial Wastes Conference* (1970). With John R. Wright.

"The Need for Traffic-Control Measurements on Urban Arterials," *Proceedings of the Seventeenth Annual New Mexico Highway Engineering Conference*. Las Cruces (1971).

"Agricultural Wastes in an Arid Zone," *Proceedings of the Forty-seventh Annual New Mexico Highway Engineering Conference*. Las Cruces (1971).

"Agricultural Wastes in an Arid Zone," *Proceedings of the Forty-seventh Annual Symposium of the Southwest and Rocky Mountain Division of the American Association for the Advancement of Science* (April 24, 1971). Phoenix. Monograph published by the Committee on Desert and Arid Zones Research.

"Development of Land-Use Policy for New Mexico," *Proceedings of the Fourth Annual Land-Use Symposium* (October, 1972). Albuquerque.

"Economic Growth and Due Process: Two Necessary Conditions for Environmental Equity," *Proceedings of the Forty-ninth Annual Symposium of the Southwest and Rocky Mountain Division of the American Association for the Advancement of Science* (1973).

"On Using More Energy, Not Less," *Bogazici University Journal*, Volume I, Istanbul, Turkey (1974).

"Environmental Design for Istanbul Sewage Disposal (discussion of an article by Charles G. Gunnerson)," *Proceedings Paper No*. 10343, discussion Vol. 101, No. EE1, *Journal of the Sanitary Engineering Division*, ASCE (February, 1975).

"Interdisciplinary Studies of Large Reservoirs in Africa," *Proceedings of Conference on Interdisciplinary Analysis of Water Resources Systems*, American Society of Civil Engineers (April, 1975). Discussion of a presentation by Gilbert F. White.

"The National Safe Drinking-Water Act--A Summary of PL 93-523," *New Mexico Water Resources Research Institute Report No*. 054 (May, 1975).

"Environmental Control Cost Implications for New Mexico's Energy Industry," *New Mexico Building* (March, 1975).

"Should We Teach Ethics in Engineering?," *New Mexico Professional Engineer* (January, 1976).

"Consulting Activities by Faculty Members," *New Mexico Professional Engineer* (April, 1976).

"Reintegrating Business and Engineering," *Proceedings*: *Annual Conference of Southwestern Business Administration Association* (March, 1976).

"Interrelationship of Ground and Surface-Water Quality in the El Paso-Juarez and Mesilla Valleys," *Natural Resources Journal*, University of New Mexico Law School, Vol. 18, No. 1, Part I (January, 1978).

"The Difference: Can Anyone Maintain It?" *New Mexico Professional Engineer* (September, 1976).

"Recruiting, Scholarship, and Work Programs Involving Women and Minority Engineering Students at New Mexico State University," *Proceedings of American Society of Civil Engineers Annual Convention* (1976).

"The Underground Injection Program under the National Safe Drinking-Water Act," *Proceedings*: *Public Policy on Ground-Water Quality Protection* (April, 1977).

"Underground Injection Program Set under Safe-Drinking Water Act," *Water and Sewage Works* (October, 1977).

"Ethics--To Have or Have Not," *New Mexico Professional Engineer* (November, 1977).

"Increasing Women and Minority Engineering Numbers," *Engineering Issues*, American Society of Civil Engineers (April, 1978). With Roger M. Zimmerman.

"Effects of Irrigation on Return-Flow Quality," *Proceedings of the International Conference on Environmental Management of Agricultural Watersheds*, Czechoslovakian Academy of Science and the International Institute for Systems Analysis (April, 1979). With Peter Wierenga.

"Criteria for Irrigation with Industrial Wastes," *Proceedings of Third Annual Turkish-German Environmental Engineering Symposium* (*Volume 3*), Bogazici University, Istanbul, Turkey (August, 1979).

"The Multiple Consultant/Manufacturer/State Relations: Work Group Report," *Proceedings of Small-System Water Treatment Symposium*, EPA 570/9-79-021 (September, 1979). With H. F. Hanson and others.

Technical Reports

"The Carbonate-Leach Uranium Extraction Process," *Public Health Service Technical Report W-62-17* (1962).

"A Numberical Solution of the Equations of Motion as Applied to Surface Flow," *Engineering Experiment Station Technical Report No. 36*, New Mexico State University (1967).

"A Compilation of Water Resources Research and Graduate Training Activities at New Mexico State University," *Water Resources Research Institute Publications No. 1*, New Mexico State University (1966). With Tom Eaton.

"A Bibliography Pertaining to the Pecos River Basin in New Mexico," *Water Resources Research Institute Publication No. 2*, New Mexico State University (1966). With Tom Eaton.

"Proposed Water-Quality Standards for the (a) Pecos River, (b) Rio Grande and Chama Rivers, (c) San Juan, Animas, and La Plata Rivers, (d) Canadian River, (3) Gila and San Francisco Rivers," *Engineering Experiment Station Technical* Report, New Mexico State University (1966-67).

"Management Alternatives in the Use of the Water Resources of the Pecos River in New Mexico," *New Mexico Water Resources Research Institute Report No. 12* (November, 1971).

"A Summary of the Federal Water-Pollution Control Act as Amended, October 18, 1972," *Engineering Experiment Station Report*, New Mexico State University (1973).

"Solid-Waste Disposal at the Istanbul University Hospital," *Bogazici University Research Center Report*, Istanbul, Turkey (1974). With Kriton Curi and Ilkin Esen.

"Rio Grande Water-Quality Base-Line Study, 1974-75, for the Rio Grande, Canals, and Associated Drains from San Marcial, New Mexico, to Fort Quitman, Texas," *New Mexico Water Resources Research Institute Report No*. 064 (June, 1976).

"Evaluation of the Impact of New Mexico's Environmental Regulations on Energy Costs," *New Mexico Energy Insitute Report No. BEF-143*, University of New Mexico (1976). With Peter Bell.

REFERENCES

Dr. Donald C. Roush Executive Vice President New Mexico State University Las Cruces, New Mexico 88003	(505) 646-2127 (505) 524-1048
Dr. Charles O'Bannon Department of Civil Engineering Arizona State University Tempe, Arizona 85281	(602) 965-3589 (606) 966-7871
Dr. Richard Griego, Director Southwest Resource Center for Science and Engineering University of New Mexico Albuquerque, New Mexico 87131	(505) 277-3641 (505) 345-7153